

**SEVENTY-NINTH DAY**

(Friday, May 28, 1993)

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by Senator Carriker.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

Pastor Lee Boss, Victory Christian Center, Austin, offered the invocation as follows:

Father, in the name of Jesus, we know that whenever we ask anything according to Your will, You hear us. And this is the confidence that we have, that if You hear us, then we have the petitions we asked for. So, Father, in the name of Jesus, I come into Your presence on behalf of the Senators of the State of Texas, asking You, Father, today that You would pour out Your spirit upon them in a new and fresh and annointed way, that they would have ears to hear and eyes to see and hearts to understand and to receive guidance from Your divine counsel. For, Lord, we know unless You pour out Your spirit upon us and we let You draw close to us, we cannot draw close to You.

Father, the people in Texas are great in number, and they need Your guidance. So I ask, Lord, in the name of Jesus, that You would give wisdom and revelation, knowledge and direction to all of our leaders, and especially to our Senators and Representatives and our Governor as they close out these sessions and as they take care of the business of this great state. And, Father, as they go home to their many directions this summer, You said in Your word that You would never leave them nor forsake them, and that You would be with them always, even until the end of the age. So we believe by faith, according to Your word, that You send ministering spirits to go before them to protect them and hold them up in their hands and bring them back to Austin safely in the days ahead. So we give You praise and glory, Father, and thank You for this opportunity to bless the Texas Senate, and I bless them this morning in the name of Jesus. Amen.

On motion of Senator Harris of Dallas and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**BILLS AND RESOLUTIONS SIGNED**

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

H.B. 54	H.B. 1858	H.C.R. 162	S.B. 529
H.B. 354	H.B. 1895	S.C.R. 51	S.B. 530
H.B. 496	H.B. 1937	S.C.R. 71	S.B. 555
H.B. 520	H.B. 1944	S.C.R. 88	S.B. 562
H.B. 605	H.B. 2088	S.C.R. 99	S.B. 590
H.B. 728	H.B. 2389	S.J.R. 44	S.B. 668
H.B. 756	H.B. 2468	S.B. 73	S.B. 781
H.B. 831	H.B. 2480	S.B. 76	S.B. 814
H.B. 937	H.B. 2537	S.B. 123	S.B. 878
H.B. 965	H.B. 2626	S.B. 145	S.B. 914
H.B. 984	H.B. 2751	S.B. 155	S.B. 926
H.B. 991	H.B. 2814	S.B. 163	S.B. 1042
H.B. 1107	H.B. 2828	S.B. 170	S.B. 1101
H.B. 1116	H.B. 2845	S.B. 205	S.B. 1110
H.B. 1224	H.B. 2854	S.B. 207	S.B. 1128
H.B. 1297	H.B. 2858	S.B. 211	S.B. 1184
H.B. 1319	H.B. 2862	S.B. 212	S.B. 1206
H.B. 1374	H.B. 2869	S.B. 264	S.B. 1236
H.B. 1429	H.B. 2871	S.B. 270	S.B. 1321
H.B. 1441	H.B. 822	S.B. 277	S.B. 1392
H.B. 1547	H.C.R. 3	S.B. 286	S.B. 1409
H.B. 1590	H.C.R. 119	S.B. 393	S.B. 1421
H.B. 1803	H.C.R. 126	S.B. 444	S.B. 1467
H.B. 1835	H.C.R. 127	S.B. 487	S.B. 1487
H.B. 1844			

(Senator Haley in Chair)

#### CAPITOL PHYSICIAN

Senator Truan was recognized and presented Dr. Allan Hoekstra of Corpus Christi as the "Doctor for the Day."

The Senate welcomed Dr. Hoekstra and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

#### CONFERENCE COMMITTEE ON HOUSE BILL 2055

Senator Parker called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2055** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2055** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chair; Truan, Ellis, Harris of Tarrant, and Haley.

**CONFERENCE COMMITTEE ON HOUSE BILL 1540**

Senator Parker called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1540** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1540** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chair; Harris of Tarrant, Harris of Dallas, Ellis, and Haley.

**CONFERENCE COMMITTEE ON HOUSE BILL 1479**

Senator Parker called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1479** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1479** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chair; Moncrief, Zaffirini, Wentworth, and Madla.

**SENATE BILL 396 WITH HOUSE AMENDMENT**

Senator Parker called **S.B. 396** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment No. 1 on Third Reading**

Amend **S.B. 396** by deleting Section 5.07(i), Texas Savings Bank Act (House Committee Printing, page 61, line 14, through page 62, line 6), and substituting the following:

(i) On liquidation of a savings bank, claims for payment have the same priority that similar claims would have on the liquidation of a federal savings bank under federal law.

The amendment was read.

Senator Parker moved to concur in the House amendment to **S.B. 396**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Rosson.

**SENATE BILL 1072 WITH HOUSE AMENDMENTS**

Senator Parker called S.B. 1072 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Floor Amendment No. 1**

Amend S.B. 1072 on page 1, line 13, by inserting between "property" and the comma "to be conveyed".

**Amendment No. 2**

Amend S.B. 1072 by striking Section 2 of the bill and substituting the following:

**SECTION 2. PROPERTY DESCRIPTION.** The real property authorized for conveyance by Section 1 of this Act consists of Tract 2 of the real property originally authorized for conveyance by the state to the city of Port Arthur by Chapter 206, Acts of the 60th Legislature, Regular Session, 1967 (enacting S.B. 285); being the real property described as Tract 2 in a patent recorded in Volume 35-B, #338 of the State Files; and being more particularly described by metes and bounds as follows:

A tract of land containing 3230.7 acres in Jefferson County, Texas, being parts of State Tracts 32, 36, 37, 38, 39, 40, 41, and 42 in Sabine Lake, and being more particularly described by metes and bounds as follows, to-wit:

Beginning at a point on the Southwesterly line of the H. L. McKee Survey, Jefferson County, Texas, a distance of 270.00 varas from the most Westerly corner of the aforementioned H. L. McKee Survey and being a point from which the U.S. Corps of Engineers Sabine-Neches Canal Reference Line Station 116+28.60 bears North 53°36'14" West 381.04 varas; said Reference Line Station being 126.00 varas from the theoretical centerline of the Sabine-Neches Canal, said point also being the point of beginning of the tract of land herein described;

Thence, South 53°36'14" East 2420.85 varas to a point for corner (X = 3,609,214.02; Y = 764,970.77);

Thence, South 10°09'07" West, 8,236.48 varas to a point for corner (X = 3,605,181.37; Y = 742,449.86);

Thence, North 37°45'58" West, 881.91 varas to a point for corner;

Thence, North 30°16'11" West, 423.00 varas to a point for corner;

Thence, North 21°00'38" West, 756.00 varas to a point for corner;

Thence, North 31°35'15" West, 306.00 varas to a point for corner;

Thence, North 20°48'58" West, 705.60 varas to a point for corner;

Thence, North 15°17'01" West, 954.00 varas to a point for corner;

Thence, North 22°53'31" West, 187.20 varas to a point for corner;

Thence, North 4°33'44" West, 338.40 varas to a point for corner (X = 3,600,218.24; Y = 753,890.06);

Thence, North 15°34'46" East, 900.00 varas to a point for corner;

Thence, North 24°01'13" East, 504.00 varas to a point for corner;

Thence, North 2°08'30" West, 576.00 varas to a point for corner;



Thence, North 3°39'50" East, 972.00 varas to a point for corner;  
Thence, North 7°21'00" West, 997.20 varas to a point for corner;  
Thence, North 21°55'43" East, 491.40 varas to a point for corner;  
Thence, North 42°23'56" East, 408.60 varas to a point for corner;  
Thence, North 0°38'54" West, 252.00 varas to a point for corner;  
Thence, North 31°16'43" East, 253.80 varas to a point for corner;  
Thence, North 45°24'46" East, a distance of 480.24 varas to the place of beginning.

All bearings herein refer to the Lambert Plane Coordinate System which differ by 2°28'41" clockwise from the True Meridian. (South Central Zone).

The amendments were read.

Senator Parker moved to concur in the House amendments to S.B. 1072.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### SENATE BILL 639 WITH HOUSE AMENDMENTS

Senator Sims called S.B. 639 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Amendment

Amend S.B. 639 by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the public meeting and notice and hearing requirements for proposed solid waste management facilities and to administrative completeness of permit applications for those facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 361.068, Health and Safety Code, is amended to read as follows:

Sec. 361.068. ~~[WHEN APPLICATION IS]~~ ADMINISTRATIVELY COMPLETE APPLICATION. (a) A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the department or the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the ~~[board of health or]~~ commission.

(b) Once a determination that an application is administratively complete has been made and the permit application has become the subject of a contested case under Section 3, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):

(1) the commission may not revoke the determination that an application is administratively complete;

(2) the commission may request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted material; and

(3) a request for additional information does not render the application incomplete.

(c) Subsection (b) does not:

(1) preclude an informal disposition of a contested case by stipulation, agreed settlement, consent order, or default; or

(2) restrict the right of any party to conduct discovery against any other party under other law.

SECTION 2. Section 361.137(b), Health and Safety Code, is amended to read as follows:

(b) The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than \$2,000 nor more than \$50,000. An additional fee may not be assessed for a draft permit returned for further processing unless the application is withdrawn.

SECTION 3. Section 361.0791, Health and Safety Code, is amended to read as follows:

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT.

(a) Notwithstanding other law, the commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission, on request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) Notwithstanding other law, the commission shall hold a public meeting on an application for a new municipal solid waste management facility in the county in which the proposed municipal solid waste management facility is to be located.

(c) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) or (b) if notice is provided as required by this section.

(d) [(c)] A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) [(d)] If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission, department, or Texas Air Control Board, as appropriate, an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(f) [(e)] The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the permit application.

(g) [(f)] The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

SECTION 4. Section 361.081(b), Health and Safety Code, is amended to read as follows:

(b) The applicant must certify to the department or commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section. Substantial compliance with the notice requirements of Subsection (a) is sufficient for the commission to exercise jurisdiction over an application for a solid waste facility.

SECTION 5. (a) The changes in law made by Sections 361.068 and 361.137(b), Health and Safety Code, as amended by this Act, apply to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is:

- (1) pending before the Texas Water Commission or its successor on the date on which this bill was filed, which was March 12, 1993; or
- (2) initiated on or after the date on which this bill was filed, which was March 12, 1993.

(b) The change in law made by Section 361.0791, Health and Safety Code, as amended by this Act, applies only to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is received by the Texas Water Commission or its successor on or after the effective date of this Act.

(c) The change in law made by Section 361.081(b), Health and Safety Code, as amended by this Act, is meant to clarify existing law and applies to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is:

- (1) received by the Texas Water Commission or its successor on or after the effective date of this Act; or
- (2) pending before the Texas Water Commission or its successor on the effective date of this Act.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

#### **Amendment No. 1**

Amend C.S.S.B. 639 as follows:

1. Page 1, line 19, after "administratively" insert "and technically"
- Page 1, line 24, after "administratively" insert "or technically"
- Page 2, line 3, after "material;" insert "provided that all parties may engage in discovery against all other parties, as provided by applicable law;"
- Page 2, line 11, delete "other" and insert "applicable"
2. Add a new SECTION 5 on page 5, line 15, as follows and renumber remaining sections accordingly:

SECTION 5. Section 361.0234, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) The assessments and rules adopted under Sections 361.0232 and 361.0234 shall not be retroactively applied to any application that was declared administratively and technically complete and for which public hearings had commenced prior to the original effective date of those Sections.
3. Page 5, lines 8 and 9, after "Act" delete ", is meant to clarify existing law and"

#### **Amendment No. 2**

Amend C.S.S.B. 639 by striking SECTION 5 of the bill and substituting the following:

SECTION 5. The changes in law made by this Act apply only to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is received by the Texas Water Commission or its successor on or after the effective date of this Act.

#### **Amendment No. 1 on Third Reading**

Amend C.S.S.B. 639 on third reading by substituting the following for the Gallego amendment adopted on second reading:

Amend C.S.S.B. 639 by striking SECTION 5 of C.S.S.B. 639 and substituting the following:

SECTION \_\_\_\_\_. (a) Except as provided by Subsection (b), the changes in law made by this Act apply only to an application for a permit under Chapter C, Chapter 361, Health and Safety Code, that is received by the Texas Water Commission or its successor on or after the effective date of this Act and to an application for a permit that is subject to Section 361.0234 (c), Health and Safety Code, as added by this Act.

(b) The change in law made by Section 361.081 (b), Health and Safety Code, as amended by this Act applies to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is:

(a) received by the Texas Water Commission or its successor on or after the effective date of this Act; or

(b) pending before the Texas Water Commission or its successor on the effective date of this Act.

The amendments were read.

Senator Sims moved to concur in the House amendments to S.B. 639.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Bivins, Brown, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Carriker, Rosson.

#### CONFERENCE COMMITTEE ON HOUSE BILL 1445

Senator Carriker called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1445** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1445** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chair; Harris of Dallas, Rosson, Henderson, and Parker.

#### PERSONAL PRIVILEGE STATEMENT

On motion of Senator Truan, the remarks by Senator Rosson were reduced to writing as follows:

Thank you, Mr. President. Members, I have done this one time before this session. The issue then was the intemperate and insensitive remarks of Commissioner Ashworth regarding the future of The University of Texas at El Paso. I am very saddened to say that I must again take up your precious time on the same subject, for nothing has changed.

Let me refresh your memories just a bit. The University of Texas at El Paso is the second oldest university in the U.T. system, only after U.T. Austin. For many years it was the second largest. It is now the third. We have 17,500 students, 60 percent of whom are Hispanic. We are the largest institution of higher education having a majority of Hispanic students in the nation. Most of our students are from El Paso. Most would be unable to attain a higher degree of education if the university in El Paso did not exist. Many are the first in their families to go to college. Many do not have the financial resources to go away to school. Most work part-time, many work full-time. I took issue with Commissioner Ashworth's remarks before because he indicated a complete insensitivity, not only to my constituents, but to all of the potential students residing in the borderlands—the 20 percent of the population of Texas who have traditionally received less than 10 percent of the higher education funding. I pointed out how much discrimination has existed over the years and now how much attention was being focused on the border as the future of Texas, not only by us but by the Governor, the Lieutenant Governor, and everyone along the border. I said at that time that Commissioner Ashworth needed an attitude adjustment.

Since that time I have visited with the Commissioner and some of the board members. My community—united as never before on the issue of education for its children—invited the Commissioner to El Paso to share our concerns with him and to discuss our future. To say that the meeting did not go well is a polite understatement. My community leaders were more than disappointed; they were furious at the Commissioner's attitude. His frequent response to their questions was, "Well, make me an offer I can't refuse." What the hell is that supposed to mean? It is a line from The Godfather. Why is the Commissioner of Education using it? His candid remarks over lunch, after he made sure that no member of the media was present, were, "Can I be frank? It really helps to have legislators like Bullock, Montford, and Laney as your alumni." What that said to my people was nothing has changed; nothing has changed. No commitment to the border has been made. It is business as usual, and I am here to tell you that that is not good enough. It will not be tolerated.

All of us along the border know the degree of yelling, cussing, and arm-twisting on the part of the Lieutenant Governor that was necessary to achieve the funding which we received this session. We know the amount of dedication and commitment that was necessary on the part of Senator Montford and Senator Truan and all of the conferees on both committees to keep that funding. We appreciate that more than anything we could ever say. But, it should not have to come to that—it should not have to come to arm-twisting and drawing lines in the sand. The Lieutenant Governor should not have to pull out all of the stops in order to force the university systems into doing what they should have been doing all along. They should do it as a matter of course, because it is the right thing to do for all of the people of Texas. The Commissioner of Higher Education apparently has not grasped that concept as yet, and that is most disturbing to me, as it should be to you.

The coordinating board is one of the most staff-captive agencies I have encountered. The members are part-time. Few have had the time to become well acquainted with the institutions and communities over which they exercise such life-and-death control. If we do not have a commissioner and a staff therefore, who share the same commitment to the future that Governor Richards, Governor Bullock, and this Legislature has expressed this session, then nothing will change and the border will continue to be the stepchild rather than the bright future of Texas.

I am asking those of you who have members on the coordinating board to talk to them about this issue. I am asking the Governor to speak to her appointees on this specific point. And, I guess, since he asked for it so many times in his remarks to my home-folks, I will try now to make the Commissioner what will hopefully be an offer he cannot refuse. I say to Commissioner Ashworth: Find retirement to be a viable and pleasant concept soon, or understand that the people of El Paso and their Senator intend to do their best to become your worst nightmare come true.

Thank you, Members.

ROSSON

**SENATE BILL 964 WITH HOUSE AMENDMENTS**

Senator Sims called S.B. 964 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend S.B. 964 by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to the location, survey, sale, and lease of vacant and unsurveyed public school land and certain public boundaries and related fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 51, Natural Resources Code, is amended to read as follows:

**SUBCHAPTER E. SALE AND LEASE OF VACANCIES**

Sec. 51.171. SALE AND LEASE OF VACANT LAND. (a) Vacant and unsurveyed public school land shall be located, sold, and leased under this subchapter, except:

- (1) submerged lands within tidewater limits;
- (2) all islands, flats, and emergent lands within tidewater limits;
- (3) natural lakes; and
- (4) riverbeds, including channels and islands in riverbeds, above tidewater limits.

(b) This subchapter does not alter or diminish the public domain status of the surface estate of riverbeds and channels and islands in riverbeds that are located above tidewater limits.

Sec. 51.172. DEFINITIONS. In this subchapter:

(1) "Applicant" means any person who files an application. The term may include a good-faith claimant.

(2) "Application" means an application to purchase or lease a vacancy under this subchapter.

(3) "Good-faith claimant" means a person who:

(A) occupies or uses or whose predecessors in interest have occupied or used a vacancy for purposes other than exploring for or removing or purporting to lease or otherwise convey oil, gas, sulphur, other minerals, or geothermal resources from the vacancy;

(B) has had, or whose predecessors in interest have had, the vacancy enclosed or within definite recognized boundaries and in possession for a period of 10 or more years with a good-faith belief that the vacancy was included within the boundaries of a survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the vacancy if it were actually located within the boundaries of the survey or surveys;

(C) is the owner of land adjoining a vacancy on which no application has previously been filed; or

(D) holds under a good-faith claimant or is entitled to a distributive share of any title acquired under an application made by a good-faith claimant.

(4) "Interest" means any right or title in or to real property, whether affecting the surface, subsurface, or mineral estate, including:

(A) fee simple title;

(B) a determinable fee created under a mineral lease or conveyance or otherwise;

(C) a royalty, nonparticipating royalty, or overriding royalty interest;

(D) a remainder or reversionary interest; or

(E) an interest arising under a lien.

(5) "Interested person" means:

(A) a person who may own or who claims any interest in land claimed to be vacant or in any land adjoining or overlapping that land as determined from the records of the land office, the records of the county clerk's office, and the tax records of the county or counties in which the land claimed to be vacant is located;

(B) any other person who asserts a right to or interest in the land claimed to be vacant and who is known to the applicant or whose identity could be ascertained by the applicant with the exercise of reasonable diligence;

(C) the attorney general; or

(D) the applicant.

(6) "Vacancy" means an area of unsurveyed public school land that:

(A) is not in conflict on the ground with land previously titled, awarded, or sold;

(B) has not been listed on the records of the land office as public school land; and

(C) was not, on the date of filing of an application:

(i) subject to an earlier subsisting application by an applicant or good-faith claimant; or

(ii) the subject of pending litigation brought by the state to recover the land.

Sec. 51.173. APPLICATION. (a) To purchase or lease a vacancy, a person must file an application. The filing of an application commences a proceeding under this subchapter. The applicant must file the application with the county surveyor of the county in which all or part of the land claimed to be vacant is located. If the county does not have a county surveyor, the application must be filed with the county clerk.

(b) The application must:

(1) describe the land that is claimed to be vacant;

(2) state whether the applicant is a good-faith claimant;

(3) state whether the applicant seeks to purchase the vacancy or obtain a mineral lease on the vacancy;

(4) state the name and last known address of all interested persons;

and



(5) provide any other information that the commissioner requires by rule.

(c) The commissioner by rule shall set an application filing fee in an amount of not less than \$5. The applicant shall pay the filing fee to the county surveyor or county clerk at the time the application is filed.

(d) The county surveyor or county clerk shall mark the exact date and hour of filing on the original and a duplicate copy of the application and shall return a marked copy to the person filing the application. The original shall be recorded in a book kept for that purpose separate from the deed or real property records.

(e) Priority among applications covering the same land claimed to be vacant is determined by the time of filing indicated by the date and hour marked on the application by the county surveyor or county clerk.

Sec. 51.174. FILING APPLICATION WITH COMMISSIONER.

(a) The applicant shall file with the commissioner a copy of the application with the county surveyor's or clerk's mark indicating the time of filing not later than the 10th day after the application is filed with the county surveyor or clerk. The applicant shall include a filing fee set by the commissioner in an amount of not less than \$100. If the 10th day after filing falls on a Saturday, Sunday, or state or federal holiday, the application may be filed on the next regular business day following the 10th day.

(b) The commissioner shall mark the date of filing on the application and assign a file number to the application.

(c) An applicant who does not file the application with the commissioner in the time provided in this section or pay the filing fee waives all rights under the application.

(d) The commissioner may refuse to accept for filing an application that:

(1) has material omissions;

(2) does not describe the land claimed to be vacant adequately for the land to be located on the ground; or

(3) describes as vacant land that has been finally adjudicated in a court of this state or of the United States not to be vacant.

Sec. 51.175. DEPOSIT. (a) If an applicant is not a good-faith claimant, the commissioner shall estimate the costs of proceeding under the application, including the costs of a survey made by a licensed state land surveyor or the county surveyor, the preparation of copies and working sketches by the land office, the mailing or publication of notices and copies, and other similar costs, excluding allocable costs of salaries and overhead expended by the land office in actually conducting a hearing or preparing orders and proposals for decision.

(b) The commissioner shall notify the applicant in writing of the estimated costs and the applicant shall make a deposit with the commissioner in the amount of the estimated costs.

(c) If at any time the commissioner determines that the funds on deposit are insufficient to pay the costs of the proceeding, the commissioner shall estimate the additional amount required and shall notify

the applicant in writing to make a supplemental deposit of the estimated amount. The notice must be dated.

(d) The applicant shall make an initial deposit or a supplemental deposit not later than the 30th day after the date of the written notice to make the deposit. The commissioner shall cancel the application if the applicant does not make a required deposit within the prescribed time. Cancellation terminates all rights under that application.

Sec. 51.176. APPEAL OF AMOUNT OF DEPOSIT. (a) An applicant may appeal the amount of an initial deposit or supplemental deposit determined by the commissioner in the manner provided for the appeal of agency decisions under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) If the applicant does not pay the amount determined by the district court on or before the 15th day after the judgment of the district court becomes final and nonappealable, the commissioner shall cancel the application. Cancellation terminates all rights under that application.

Sec. 51.177. DISPOSITION OF DEPOSITS. (a) The commissioner shall deposit all initial and supplemental deposits received under this subchapter to the credit of a separate trust account in the treasury. The treasurer, on the commissioner's order, shall make disbursements from that account for purposes authorized by this subchapter.

(b) After proceedings on an application are concluded and all expenditures authorized under this subchapter are paid, the commissioner shall provide the applicant a complete statement of all deposits and expenditures and shall remit to the applicant any balance remaining from the deposit or supplemental deposits made by the applicant.

Sec. 51.178. APPOINTMENT OF SURVEYOR. (a) Not later than the 60th day after the date on which the required deposit is paid, the commissioner shall appoint a licensed state land surveyor or the county surveyor of the county in which all or a part of the land claimed to be vacant is located to make a survey of that land.

(b) The fees and expenses paid for the survey are those provided by law. If the fees and expenses are not provided by law, the commissioner and surveyor shall make an agreement as to the fees and expenses reasonable for the work to be performed.

(c) The fees and expenses shall be paid by the applicant and may be paid from the initial deposit or any supplementary deposits made by the applicant under this subchapter.

(d) The commissioner shall promulgate rules setting out the qualifications and method of selection of surveyors appointed pursuant to this section. The rules shall provide the greatest practicable opportunity for all qualified surveyors to obtain appointment and shall provide the opportunity for an interested party to move for the removal of an appointed surveyor on the grounds of bias, prejudice, or conflict of interest. No surveyor appointed shall be removed, however, except upon notice to the surveyor and all interested parties and hearing. The fact of removal of a surveyor shall not be a basis for any disciplinary action against that surveyor under the Professional Land Surveying Practices Act (Article 5282c, Vernon's Texas Civil Statutes).

Sec. 51.179. NOTICE TO INTERESTED PERSONS. (a) Not later than the 10th day after the date on which the commissioner appoints the surveyor, the commissioner shall give notice by certified mail, return receipt requested, to all interested persons at the last known address. The notice shall contain:

- (1) the date of the notice;
- (2) a statement that a vacancy application has been made;
- (3) the name, address, and telephone number of the surveyor appointed to make the survey;
- (4) a statement that the survey may begin any time after the 20th day after the date of the notice;
- (5) a statement that an interested party is entitled to:
  - (A) observe the conduct of the survey;
  - (B) receive a copy of the final survey report and other documents filed by the surveyor; and
  - (C) participate in the vacancy proceeding;
- (6) a true and legible copy of the application; and
- (7) other information the commissioner by rule may prescribe.

(b) If the location of an interested person is unknown or if a notice is returned as unclaimed or undeliverable, the commissioner shall publish notice as prescribed by the Texas Rules of Civil Procedure. If notice by publication is made, the survey may not begin and further proceedings may not be held until the 30th day after publication is completed.

(c) If the applicant, another interested person, or the surveyor shows that the delay required by Subsection (b) of this section may materially affect the accuracy of the survey because of destruction, alteration, or removal of natural features, monuments, or witness objects, or for other good cause, the commissioner may order the survey to proceed. Notice of the request to proceed with the survey and of any order issued in response to the request shall be mailed first class to all interested persons.

(d) The right of an interested person, personally or through a representative or representatives, to observe the conduct of a survey made under this subchapter does not require a delay in the conduct of a survey solely to allow an interested person or that person's representative to be present during the survey.

Sec. 51.180. WAIVER OF NOTICE. (a) An interested person may waive service of the notice required by Section 51.179 of this code by filing with the commissioner a sworn affidavit stating the person's intent to waive notice. The affidavit shall state that the person executing the waiver has been provided with a true copy of the application filed with the commissioner.

(b) The affidavit may also state clearly the interested person's intent to waive all further notice of the vacancy proceedings. If the affidavit states this intent, it must also state prominently and clearly that the interested person is aware that waiving the right to further notice may result in the loss of the opportunity to appear and to contest the application.

(c) The commissioner by rule may prescribe the form and specific content of the affidavit described in this section, including additional information to be included.

Sec. 51.181. SURVEY. (a) Except when notice by publication is required, at any time after the 20th day after the date of the notice required by Section 51.179(a) of this code, the surveyor shall begin the survey of the land claimed to be vacant.

(b) The surveyor shall prepare and file in the land office:

(1) a detailed written report of all aspects of the survey, including record research conducted, survey corners recovered in the course of the field survey, and details of boundary construction using recovered corners;

(2) field notes in the form and content prescribed by law, describing the land and the lines and corners surveyed;

(3) a complete plat depicting in detail the survey results;

(4) the names and addresses of all persons who have possession of the land described in the application and a description of the lands occupied by those persons; and

(5) the names and addresses of all persons known to the surveyor who have or claim any interest in the land.

(c) The surveyor shall file the report required by this section not later than the 140th day after the date of the notice required by Section 51.179(a) of this code. If notice by publication is required and the commissioner has not ordered the survey to proceed, the surveyor shall file the report not later than the 170th day after the date on which notice by publication is completed. If the commissioner has ordered the survey to proceed, the surveyor shall file the report not later than the 140th day after the date of the commissioner's order.

(d) For good cause shown, the commissioner by written order may extend the time for filing the survey. The order shall state the cause for the extension and shall be included in the record. A single order may not extend the time for filing by more than 60 days.

(e) An interested person at the person's own expense may have any surveying done that the person considers desirable, but a survey report, a plat, or field notes based on a survey made by a person not qualified by law to survey public lands in this state may not be admitted into evidence in a vacancy proceeding or filed in the land office.

(f) The commissioner shall serve a true copy of the survey report, field notes, plat, and all other documents filed by the surveyor on each interested person, including those named in the survey report, by certified mail, return receipt requested, not later than the fifth business day after the survey report is filed in the land office.

Sec. 51.182. ADDITIONAL INTERESTED PERSONS. (a) All persons named in the survey report as occupying or as having or claiming any interest in the land described in the application shall be included in the proceeding as interested persons and shall be provided notice as prescribed by this subchapter.

(b) An application may not be canceled or a proceeding terminated because of the discovery of an additional interested person unless the commissioner finds that the person filing the application knowingly and intentionally omitted the name of the person from the application.

Sec. 51.183. EXCEPTIONS. An interested person may file exceptions to the survey report, field notes, and plat not later than the 30th day after the date the survey report is filed in the land office. A person filing exceptions shall serve a true copy on all interested persons and on the surveyor by certified mail, return receipt requested. The exceptions shall include a certificate of the fact of that service.

Sec. 51.184. ADDITIONAL SURVEYS. (a) The commissioner or the land office staff may consult with the surveyor. The commissioner, after notice to the interested persons, may direct the surveyor to make additional surveys, to investigate as the commissioner considers necessary, and to prepare supplemental reports, plats, and field notes the commissioner requires.

(b) The commissioner shall provide copies of all reports, plats, field notes, and other information resulting from additional surveys and investigation to all interested persons.

(c) An interested person may file exceptions or other responses not later than the 20th day after the surveyor files the required documents with the land office.

(d) Service of additional documents and exceptions or responses to those documents shall be made as provided by Sections 51.181 and 51.183 of this code.

Sec. 51.185. ACTION ON APPLICATION. (a) Not later than the 90th day after the date on which the surveyor files the survey report and other documents required to be filed, the commissioner shall either deny the application as provided by Section 51.186 of this code or hold a hearing to determine whether a vacancy exists.

(b) Except as provided by Section 51.192 of this code, the commissioner may not find that a vacancy exists unless a hearing is held.

(c) The commissioner shall decide all issues raised or that could be raised by the application and any exceptions or responses to the application, including the existence of a vacancy, the boundaries of a vacancy, and the status and rights of any interested person as a good-faith claimant or prior applicant.

(d) The commissioner may not decide in a proceeding on an application any claim of the state or permanent school fund for damages arising from trespass, the removal or use of minerals or geothermal resources, mispayment of proceeds from the sale or use of minerals or geothermal resources, damages to the soil, vegetation, or other life or habitat, and similar or related claims. Those claims may be asserted by the commissioner in administrative proceedings under rules adopted by the commissioner or through suit brought by the attorney general at the request of the commissioner.

(e) Evidence or testimony regarding the existence or extent of mineral development or other economic use of land claimed to be vacant may not be introduced or considered, unless that evidence or testimony is relevant to determine the existence or boundaries of the alleged vacancy or the status of a person as a good-faith claimant.

Sec. 51.186. DENIAL OF APPLICATION. (a) If, after reviewing the survey report, any supplemental reports, any exceptions to the reports, all

pertinent publicly available records of the land office and the state archives, and land office staff recommendations, the commissioner decides that the land claimed to be vacant is not vacant, the commissioner may enter an order denying the application. The order shall contain findings of fact, conclusions of law, and other matters the commissioner considers appropriate.

(b) The commissioner shall promptly send a true copy of the order denying the application to the applicant by certified mail, return receipt requested.

(c) The commissioner shall place in the file assigned to the application the original order, all materials filed by the surveyor, all exceptions and responses to the surveyor's filings, all memoranda provided to the commissioner by the land office staff, a list of all files and records of the land office and state archives examined by the staff or commissioner in connection with the application, and all other relevant papers.

(d) An interested person may request a rehearing and appeal the commissioner's order as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and by rules adopted by the commissioner consistent with that Act. If a rehearing is not requested, the order becomes final on the 30th day after the date it is signed. If a rehearing is requested and denied, the order becomes final on the date that time for appeal to the district court expires. If appeal is taken, the order becomes final on the date that a judgment disposing of the order becomes final.

(e) When the commissioner's order denying the vacancy is final, all rights under the application are terminated.

Sec. 51.187. EFFECT OF FINAL ORDER. (a) A final order of the commissioner under this subchapter is conclusive with respect to the land described in the application or final order. A final order of the commissioner does not have the effect of stare decisis with respect to land not described in the application or final order, but may be considered with all other evidence.

(b) The cancellation, withdrawal, abandonment, or termination of an application, the refusal of the commissioner to accept an application for filing, or the order or judgment of any court resulting in or affecting such an action has no effect on a subsequent determination of whether any land described in the application is vacant.

(c) A decision of the commissioner issued before September 1, 1993, that denies a vacancy application or letter of inquiry is not conclusive as to the existence or nonexistence of a vacancy.

Sec. 51.188. RULEMAKING: VENUE OF APPEALS. (a) A hearing under this subchapter and further proceedings arising from the hearing shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and rules adopted by the commissioner consistent with that Act.

(b) Appeal of a final order of the commissioner is to a district court of the county in which the land claimed to be vacant or a part of that land is located. The district court shall review the commissioner's order under the substantial evidence rule.

Sec. 51.189. COMMISSIONER'S ORDER. (a) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state or its predecessor sovereigns, the commissioner shall enter an order declaring the existence of a vacancy and determining all other issues.

(b) If it appears to the commissioner that the land claimed to be vacant is not vacant, the commissioner shall enter an order denying the application and determining all other issues.

(c) The commissioner shall base the order on the testimony and other competent evidence presented at the hearing, the surveyor's filings and all supplements to those filings, any exceptions or responses to the surveyor's filings and all supplements to those filings, and the publicly available records of the land office and the state archives. The commissioner and the examiner or examiners who conduct hearings on the application may consult with the land office staff and the surveyor to the extent permitted by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The record shall include a list of the names and titles of all staff consulted, a list of the files and documents of the land office and state archives examined, and a copy of all memoranda provided to the examiners or commissioner by the land office staff or by the surveyor.

(d) The order shall contain:

(1) findings of fact;

(2) conclusions of law;

(3) a field note description of the land, if any, found to be vacant, sufficient to locate it on the ground, and other elements required by law;

(4) an accurate plat of the land, if any, found to be vacant consistent with the field notes and prepared by the surveyor or a licensed state land surveyor on the land office staff; and

(5) other matters the commissioner considers appropriate.

(e) The commissioner's order may adopt, without restating, the findings of fact and conclusions of law stated in a proposal for decision prepared by the examiner or examiners who conducted the hearings and any opinion or statement contained in that proposal for decision.

Sec. 51.190. DETERMINATION OF BOUNDARIES: REOPENING.

(a) In determining the boundaries and size of a vacancy, the commissioner is not restricted to a description of the land claimed to be vacant that is provided by the applicant, the surveyor, or an interested party. The commissioner shall adopt the description of a vacancy that best describes the vacancy and is consistent with the information available under this section.

(b) If in determining the boundaries and size of a vacancy it becomes apparent to the commissioner that persons who have not been named as interested persons and who have not been served notice of the proceeding under the application may be affected by the finding that a vacancy exists at the location and with the boundaries believed by the commissioner to conform to the record, the proceeding shall be reopened and the persons affected shall be joined as interested persons and given an opportunity to participate adequately in the proceeding. This subsection does not require

the refiling of an application or the conduct of a new survey by the surveyor.

Sec. 51.191. GOOD-FAITH CLAIMANT STATUS. (a) An applicant or interested person who wishes to assert status as a good-faith claimant may file notice of claim of good-faith status at any time before the 20th day preceding the date on which the first hearing begins. The notice of claim of good-faith status shall state the grounds for the claim and describe the land claimed to be affected by the good-faith status. The notice shall be filed in the land office and served on all interested persons by certified mail, return receipt requested.

(b) Filing notice of claim of good-faith status is not an admission by the person asserting the claim that a vacancy exists.

Sec. 51.192. ORDER WITHOUT NOTICE AND HEARING. (a) An applicant who asserts status as a good-faith claimant may present evidence to the commissioner that:

(1) the good-faith claimant owns all of the land and interests in land completely surrounding the land claimed to be vacant;

(2) there is no subsisting prior application covering the land described in the good-faith claimant's application;

(3) no previous application has been made covering the land described in the good-faith claimant's application; and

(4) the good-faith claimant meets all other requirements of a good-faith claimant.

(b) If the commissioner finds that the evidence presented is accurate, further notice to other persons is not required and, on acceptance for filing by the commissioner of a survey made by a licensed state land surveyor or the county surveyor of the county in which the land claimed to be vacant or a part of that land is located, the commissioner may enter an order declaring the existence of the vacancy and determining the good-faith status of the applicant.

(c) For purposes of this section, land claimed to be vacant and surrounded by lands owned only by the good-faith claimant and the state is considered to be surrounded completely by land owned by the good-faith claimant.

(d) Two or more persons may jointly apply as good-faith claimants under this section if together they meet the requirements of Subsection (a) of this section.

(e) A person who would have been an interested person under an application made under this subchapter by a person other than a good-faith claimant may move to set aside an order entered under this section by filing a written motion with the commissioner not later than the second anniversary of the date of that order. The person shall serve a true copy of the motion by certified mail, return receipt requested, on the applicant and all persons holding or claiming under the applicant.

(f) The commissioner shall set aside an order issued under this section finding that a vacancy exists if, after notice and hearing, the commissioner finds that the person asserting rights under this section, at the time the order declaring the vacancy was entered, did not:



- (1) qualify as a good-faith claimant under this subchapter;
- (2) own all of the land and interests in land surrounding the land claimed to be vacant; or
- (3) meet another material requirement of this section.

(g) The commissioner on the commissioner's own motion may set aside an order after notice and hearing as required by Subsections (e) and (f) of this section.

(h) If the order is set aside, the commissioner shall reopen the proceeding on the application and conduct the reopened proceeding in the same manner as proceedings on other applications.

(i) The issues in a reopened proceeding are limited to the status of the applicant as a good-faith claimant entitled to rights under this section and the rights of any other person as an applicant or good-faith claimant.

(j) An application of a good-faith claimant who does not own all of the land and interests in land completely surrounding the land claimed to be vacant is treated as an application under other sections of this subchapter.

Sec. 51.193. SALE OR LEASE OF VACANCY. (a) When a vacancy has been established by final order, the school land board may sell or lease the vacancy as provided by this subchapter.

(b) The board shall set the sale price and other terms and conditions as in all other sales of other lands dedicated to the permanent school fund. The sale price may not be less than the fair market value as determined by an appraisal conducted by the land office.

(c) The fee prescribed in Section 32.110(a) of this code applies to all sales and leases made under this subchapter.

(d) The board may allow a credit against the sale price in an amount not to exceed the actual cost of the survey paid by an applicant or good-faith claimant if:

(1) the purchaser is a person exercising a preferential right to purchase under this subchapter;

(2) the board has reserved all mineral and geothermal leasing rights; and

(3) the board finds that the fair market value of the mineral estate is equal to or exceeds 50 percent of the amount of the credit.

Sec. 51.194. MARKET VALUE: MEDIATION: BINDING ARBITRATION. (a) A person seeking to purchase a vacancy by exercising a right of preferential purchase under this subchapter, by filing a written request with the commissioner, may have the issue of market value submitted to mediation before a trained mediator acceptable to both the board and the person seeking to purchase the vacancy if:

(1) the price set by the board under Section 51.193 of this code exceeds by 15 percent or more the market value estimated in an appraisal made by a real estate appraiser certified in Texas for the person seeking to purchase the vacancy; and

(2) the appraisal was made not more than six months before the date on which the board set the price.

(b) If agreement on price is not reached through mediation on or before the 60th day after the first mediation session, the person seeking

to purchase the vacancy, by filing a written request with the commissioner, may have the issue of market value submitted to binding arbitration.

(c) A panel of three real estate appraisers certified in Texas shall conduct the arbitration. The person seeking to purchase the vacancy shall name one member of the panel, the board shall name one member of the panel, and the two panel members shall name the third member of the panel, who is the panel's presiding officer. The board or the person seeking to purchase the vacancy may object to and have disqualified the first person named to the panel by the other party. Appraisers employed by or who contract with the land office are eligible to serve on the arbitration panel.

(d) The arbitration shall be conducted under the rules of the American Arbitration Association or under other rules agreed on by the parties.

(e) The decision of the arbitration panel is not subject to judicial review.

(f) The costs of mediation and arbitration shall be shared equally by the land office and the person seeking to purchase the vacancy.

Sec. 51.195. CONDITIONS OF SALE: MINERAL AWARDS. (a) In all sales, the board shall reserve to the permanent school fund all oil, gas, sulphur, and other minerals and geothermal resources and shall determine the manner in which those minerals and geothermal resources are to be leased.

(b) Before the sale of a vacancy, the land office shall prepare and present to the board a study of the mineral prospects and value of the vacancy, taking into consideration the size and configuration of the vacancy, its location with respect to other surrounding and nearby tracts, the proximity of mineral production, and the likelihood of future mineral leasing and development. The study shall include a recommendation as to the method most advantageous to the state by which the vacancy could be leased.

(c) The board shall review the study and land office recommendations and shall determine whether:

(1) the state shall retain all leasing rights and the vacancy shall be leased as provided in Subchapter B, Chapter 52, and Subchapters B and E, Chapter 53, of this code; or

(2) the owner of the soil shall be designated to execute leases as the agent of the state subject to the rights, obligations, and liabilities of Subchapter F, Chapter 52, and Subchapter C, Chapter 53, of this code.

(d) If the board determines that the owner of the soil shall act as agent under Subsection (c)(2) of this section, the board shall establish the division of bonus, rental, and royalty between the permanent school fund and the owner of the soil. The portion to be paid to the owner of the soil may not be less than 20 percent or more than 50 percent. The board may establish different portions to be paid to the owner of the soil for the lease of different substances.

(e) If the board provides for lease by the owner of the soil under Subsection (c)(2) of this section, the original purchaser is a good-faith claimant, and the vacancy was established under an application made by a person other than a good-faith claimant, the board shall award the

applicant a perpetual nonparticipating royalty of not less than 1/32 or more than 1/16 of the value of all oil, gas, and sulphur produced and a perpetual nonparticipating royalty of not less than one percent or more than two percent of the value of all geothermal resources and all other minerals produced.

(f) If the board determines that the state shall retain all leasing rights as provided in Subsection (c)(1) of this section, the board shall award:

(1) to an applicant other than a good-faith claimant, a perpetual nonparticipating royalty of 1/32 of the value of oil and gas and one percent of the value of all geothermal resources and all other minerals produced; and

(2) to a good-faith claimant purchasing the vacancy, a nonparticipating royalty of 1/32 of the value of oil and gas and one percent of the value of all geothermal resources and all other minerals produced.

(g) If a preferential right to obtain the first mineral lease on a vacancy is exercised by any person, the state's royalty under the lease shall be reduced by 25 percent for a period of five years after the date of first production under the first lease if sales of production from or attributable to the lease are commenced during the primary term of the lease.

Sec. 51.196. PREFERENTIAL RIGHT OF GOOD-FAITH CLAIMANT.

(a) A good-faith claimant has a preferential right to purchase or lease the portion of a vacancy subject to the good-faith claim.

(b) A good-faith claimant may exercise the preferential right by filing a notice of intent to purchase or lease, on a form prescribed by the board, not later than the 90th day after the date the order establishing the vacancy becomes final. The good-faith claimant shall describe in the notice the portion of the vacancy the good-faith claimant seeks to purchase or lease. The good-faith claimant shall mail a copy of the notice to the applicant and to all other interested persons who have asserted status as good-faith claimants.

(c) All preferential rights held by a good-faith claimant expire if the good-faith claimant does not file the notice of intent within the time prescribed by Subsection (b) of this section or does not complete the purchase or lease within 60 days after the board sets the terms of the purchase or lease. For good cause shown, the board may extend the time to complete the purchase or lease by a period not to exceed 90 days.

(d) A good-faith claimant exercising a preferential right shall repay to the applicant the applicant's reasonable expenses incurred in determining the existence of a vacancy, excluding filing and attorney fees, not later than the date on which the sale or purchase by the good-faith claimant is completed. Failure to pay the expenses cancels the preferential right of the good-faith claimant.

Sec. 51.197. PREFERENTIAL RIGHT OF APPLICANT OTHER THAN GOOD-FAITH CLAIMANT. (a) On the expiration of the preferential right of a good-faith claimant to purchase or lease or if there is no good-faith claimant, an applicant who is not a good-faith claimant has a preferential right to purchase or lease all or any portion of the vacancy.

(b) An applicant may exercise the preferential right by filing a notice of intent to purchase or lease, on a form prescribed by the board, not later than the 90th day after the date on which the rights of the good-faith claimant expire. The applicant shall describe in the notice the portion of the vacancy the applicant seeks to purchase or lease. The applicant shall mail a copy of the notice to all other interested persons asserting status as good-faith claimants.

(c) All preferential rights held by an applicant expire if the applicant does not file the notice of intent within the time prescribed by Subsection (b) of this section or does not complete the purchase or lease within 60 days after the date on which the board sets the terms of the purchase or lease. For good cause shown, the board may extend the time to complete the purchase or lease by a period not to exceed 90 days.

Sec. 51.198. RIGHTS ASSIGNABLE. An applicant or good-faith claimant may assign all rights in a vacancy or land claimed to be vacant. The assignment must be in writing. The assignor shall record the assignment in the real property records of the county or counties in which the vacancy or land claimed to be vacant is located and file a certified copy of the recorded assignment in the land office.

Sec. 51.199. LEASE TERMS UNDER PREFERENTIAL RIGHTS. The board shall prescribe terms for preferential purchases or leases consistent with this subchapter. The board may not grant a preferential lease with a royalty of less than 1/8 of the value of all oil, gas, and sulphur produced or less than five percent of the value of all geothermal resources and all other minerals produced.

Sec. 51.200. EFFECT OF PRIOR CONVEYANCES. (a) A mineral lease, surface lease, deed, or any other conveyance of any interest in land executed by a good-faith claimant before the date of completion of a sale or lease under this subchapter does not give the grantee under that conveyance any interest in or to the vacancy or its minerals.

(b) A title to land or an interest in land acquired from the state under a preferential right does not pass as after-acquired title under a covenant of general warranty, description, or other provision contained in a conveyance executed before the date of completion of a sale or lease under this subchapter.

Sec. 51.201. RULEMAKING AUTHORITY. (a) The commissioner may adopt rules consistent with this subchapter relating to applications to purchase or lease vacancies and the determination of the existence of vacancies.

(b) The board may adopt rules consistent with this subchapter relating to the sale and lease of vacancies.

Sec. 51.202. CONFLICT WITH OTHER CODE PROVISIONS. To the extent that any provision of this subchapter pertaining to vacancies or the sale or lease of vacancies conflicts with any other provision of this code, this subchapter controls.

[Sec. 51.171. Sale and Lease of Vacant Land. Vacant and unsurveyed public school land except riverbeds, channels, islands, lakes, bays, and other areas in tidewater limits shall be sold and leased under the provisions of this subchapter.

~~[Sec. 51.172. Definitions. In this subchapter:~~

~~[(1) "Good-faith claimant" and "claimant" mean any person:~~

~~[(A) who occupies or uses or has previously occupied or used or whose predecessors in interest have occupied or used a vacancy for purposes other than exploring for or removing oil, gas, sulphur, or other minerals from the vacancy; and~~

~~[(B) who has himself or whose predecessors in interest had the vacancy enclosed or within definite recognized boundaries and in possession for a period of 10 years with a good-faith belief that the vacancy was included inside the boundaries of the survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the vacancy if it were actually located within the boundaries of the survey or surveys whose boundaries are recognized boundaries in the community.~~

~~[(2) "Vacancy" means an area of unsurveyed public school land that:~~

~~[(A) is not in conflict on the ground with land previously titled, awarded, or sold;~~

~~[(B) has not been listed on the records of the land office as public school land; and~~

~~[(C) was, on the date of filing, neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the state to recover the land.~~

~~[(3) "Applicant" means any person, other than a good-faith claimant, who discovers and files an application to purchase or lease a vacancy.~~

~~[Sec. 51.174. Purchase of Vacancy by Adjoining Landowner. If the owner of the land adjoining an alleged vacancy files an application to purchase the vacancy and no application to purchase or lease the vacancy has been previously filed, the owner of the adjoining land, who otherwise qualifies as a good-faith claimant, shall be considered a good-faith claimant regardless of the length of time he has owned the adjoining land or has enclosed the vacancy or has had it within definite recognized boundaries and in possession with the belief that the vacancy was included within his survey.~~

~~[Sec. 51.175. Application to Purchase or Lease a Vacancy. (a) An applicant who claims that a vacancy exists and who desires to purchase or lease the vacancy shall file with the county surveyor in the county in which any part of the vacancy is located a sworn written application in duplicate to purchase or lease the vacancy.~~

~~[(b) The application shall:~~

~~[(1) describe the land that is claimed to be vacant;~~

~~[(2) state the desire of the applicant to purchase or lease the land under the provisions of this chapter;~~

~~[(3) give the names and addresses of any owners or claimants of land or any interest in land or of leases on, adjoining, overlapping, or including the land claimed to be vacant as far as can be determined from the records of the land office and the county clerk's office in the county~~

~~in which the land is located and the tax records of the county in which the land is located;~~

~~[(4) give the names and addresses of any persons who, from facts known to the applicant, assert any right to the alleged vacant land; and~~

~~[(5) state that the applicant knows of no other claimants than those listed;~~

~~[Sec. 51.176. Filing Fee. At the time the application is filed, the applicant shall pay to the county surveyor a filing fee set by the board of not less than \$5.~~

~~[Sec. 51.177. Filing Application With County. (a) The county surveyor shall mark the exact date and hour of filing on the original and duplicate copy of each application and shall return one copy of the application to the applicant and shall record the other copy in a book kept for that purpose.~~

~~[(b) If the county does not have a county surveyor, the preliminary filing of the application shall be with the county clerk. The county clerk shall record the application in a book kept for that purpose and not in the deed records.~~

~~[Sec. 51.178. Filing Application With Commissioner. (a) Within 10 days after the application is filed with the county surveyor, the copy of the application that is returned to the applicant shall be filed with the commissioner.~~

~~[(b) The commissioner shall mark the date of filing on the application.~~

~~[(c) The applicant shall pay to the commissioner a filing fee set by the commissioner in an amount not less than \$100.~~

~~[(d) Failure to file the application with the commissioner in the time provided by this section and to pay the filing fee constitutes a waiver of all rights under the application.~~

~~[(e) As between applicants, priority dates from the time of filing the application with the county surveyor.~~

~~[Sec. 51.179. Deposit. (a) The commissioner shall notify the applicant by letter of the estimated cost of proceeding under the application, and within 30 days after the date of the commissioner's letter, the applicant shall make a deposit with the commissioner to pay the cost of the work that may be necessary to comply with the request contained in the application.~~

~~[(b) On failure to make the deposit required under this section, all rights under the application are lost.~~

~~[Sec. 51.180. Insufficient Deposit. (a) If the deposit is insufficient, the applicant shall be requested by letter to make a further deposit of an amount determined by the commissioner.~~

~~[(b) If the further deposit is not made within 30 days after the date of the letter, work shall be discontinued and the application canceled with the cancellation endorsed on the application.~~

~~[(c) On cancellation, the right to purchase or lease the vacancy under the application is lost.~~

~~[Sec. 51.181. Appeal of Amount of Deposit. (a) The applicant is entitled to appeal the estimated cost determined by the commissioner to a district court in Travis County by giving written notice to the~~

~~commissioner within 15 days after receiving the estimated cost from the commissioner as provided in Sections 51.179 through 51.180 of this code.~~

~~[(b) The applicant has 15 days after the district court enters its decision in which to pay the amount ordered by the court's decision.~~

~~[Sec. 51.182. Deposits as Trust Fund. Deposits provided under Sections 51.179 through 51.180 of this code shall be a special trust fund to be used only for the purpose authorized by this subchapter.~~

~~[Sec. 51.183. Statement and Refund of Remaining Deposit. As soon as the total expense properly charged against the deposit is determined, the commissioner shall render a complete statement to the applicant together with any balance remaining from the deposit.~~

~~[Sec. 51.184. Notice of Intention to Survey. (a) After the application is filed with the commissioner and the deposit is made, the commissioner shall mail a notice of intention to survey to all persons named as interested persons in the application at the addresses provided in the application and to the attorney general.~~

~~[(b) The notices shall be deposited in the post office in Austin at least 10 days before the date set for the beginning of the survey.~~

~~[Sec. 51.185. Appointment of Surveyor. (a) The commissioner shall appoint a surveyor to make the survey in accordance with the notice of intention to survey.~~

~~[(b) The surveyor shall be a surveyor licensed by the state or the county surveyor of the county in which the vacancy or part of the vacancy is located.~~

~~[(c) The fees and expenses paid for the survey shall be the same as provided by law, and if the fees and expenses are not provided by law, the commissioner and surveyor shall make an agreement as to fees and expenses that shall not be more than an amount that is reasonable for the work performed.~~

~~[(d) The fees and expenses shall be paid by the applicant.~~

~~[Sec. 51.186. Survey Report. (a) Except as provided in Subsection (b) of this section, a written report of the survey, together with field notes describing the land and the lines and corners surveyed and a plat showing the results of the survey, shall be filed in the land office within 120 days from the filing of the application.~~

~~[(b) The commissioner may extend the time for filing the survey if good cause is shown. The cause for extension of time shall be stated in writing and filed as part of the record of the proceedings. An extension of time may not be more than 60 days.~~

~~[(c) The survey report shall give the names and post-office addresses of all persons who have possession of the land described in the application and of all persons found by the surveyor who have or claim any interest in the land.~~

~~[Sec. 51.187. Personal Survey. Any interested party at his own expense may have any surveying done that he considers desirable.~~

~~[Sec. 51.188. Hearing and Notice. (a) Within 60 days after the surveyor makes his report, a hearing may be held before the commissioner to determine whether or not there is a vacancy.~~

~~[(b) The date for the hearing shall be provided in the notice that the commissioner shall give to all persons thought to be interested parties and to all persons shown by the record of the proceeding to be interested parties, including the attorney general.~~

~~[(c) The notice of the hearing shall be deposited at the post office in Austin at least 10 days before the date set for the hearing.~~

~~[(d) At the hearing, the state and each interested party, whether or not he received notice, is entitled to be heard.~~

~~[(e) The hearing shall be conducted in accordance with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~

~~[Sec. 51.189. Determination of Vacancy by Commissioner. (a) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, he shall give prompt notice of this finding to the applicant and to all persons who were previously identified as interested parties.~~

~~[(b) After the notice is given under Subsection (a) of this section, and subject to the preferential right of a good-faith claimant, the applicant is entitled for 120 days to purchase or lease the portion of the land that is determined to be vacant at a price set by the board as provided in this code and with the same royalty reservation as provided in Section 51.201 of this code.~~

~~[(c) No award may be made by the commissioner unless a hearing is held, and no presumption may obtain in a suit involving the existence of a vacancy as a result of the action of the commissioner in this respect.~~

~~[Sec. 51.190. Purchase or Lease by Applicant. (a) If there is no good-faith claimant or if no good-faith claimant exercises his preferential right within the time allowed, the applicant is entitled to purchase or lease, according to his application, the vacancy for which he made application and which is found to exist.~~

~~[(b) Consideration shall be determined by the board as provided in this subchapter, but without consideration of potential mineral value.~~

~~[Sec. 51.191. Suit to Recover Land. A good-faith claimant of a vacant or unsurveyed tract of land has 30 days after the sale or lease of the land to the applicant to institute suit to set aside the sale or lease of the land. If the suit is not instituted within the 30-day period by the good-faith claimant, he loses all preferential rights to purchase or lease the land.~~

~~[Sec. 51.192. Denial of Vacancy by Commissioner. (a) If the commissioner decides that the area alleged to be vacant is not vacant, he shall endorse this decision on the application and file it with his finding.~~

~~[(b) The commissioner shall promptly notify the applicant of his decision by registered mail and shall file all reports and papers received in connection with the application.~~

~~[(c) After the commissioner takes all action provided under Subsections (a) and (b) of this section, he shall take no further action with respect to the application unless the existence of the alleged vacancy is determined by a court of competent jurisdiction.~~

~~[(d) Within 90 days after the commissioner's decision is mailed, unless the applicant files suit in a district court in a county in which part of the~~



~~alleged vacancy is located to litigate the question of the existence of a vacancy, the applicant's application and all preference rights acquired to purchase or lease the alleged vacancy become null and void.~~

~~[Sec. 51.193. Preferential Right of Good-Faith Claimant. (a) A good-faith claimant who ascertains that a vacancy exists or that a claimed vacancy may exist or who has been notified by the commissioner that a vacancy has been found to exist on land claimed by him shall have a preferential right to purchase or lease the vacancy at any time until 90 days after a decision of the commissioner declaring the existence of a vacancy.~~

~~[(b) The good-faith claimant may purchase or lease the vacancy by submitting a written application to the commissioner for the purchase or lease of the vacancy and by furnishing to the commissioner satisfactory proof that he is a good-faith claimant.~~

~~[(c) The good-faith claimant is entitled to purchase or lease the portion of the land that is vacant at the price set by the board subject to the royalty reservations provided in this subchapter which are effective on the date the application is filed.~~

~~[Sec. 51.194. Term of Preferential Right. A good-faith claimant has a preferential right to purchase the land alleged or adjudicated to be vacant until 90 days after the final judicial determination of the existence of the vacancy.~~

~~[Sec. 51.195. Effect of Good-Faith Claimant's Application. The application of a good-faith claimant may not be used or considered as an admission on his part that a vacancy exists.~~

~~[Sec. 51.196. Procedure for Purchase or Lease by Good-Faith Claimant. (a) On the date a good-faith claimant's application is filed, if there is no valid and subsisting application previously filed by an applicant covering the alleged vacancy, the application of the good-faith claimant shall be filed and shall be accompanied by:~~

~~[(1) a filing fee set by the commissioner in an amount not less than \$1;~~

~~[(2) a written report of a surveyor licensed by the state or by the county surveyor of any county in which all or part of the alleged vacancy is located;~~

~~[(3) field notes describing the land and the lines and corners surveyed;~~

~~[(4) a plat showing the results of the survey; and~~

~~[(5) any proof that will show to the satisfaction of the commissioner that the applicant is a good-faith claimant.~~

~~[(b) The good-faith claimant may file his application to purchase or lease and within 120 days from the date of filing the application with the commissioner have a survey made of the alleged vacancy and file the report, field notes, and plat in the land office together with proof that he is a good-faith claimant.~~

~~[(c) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, the commissioner shall grant the application under the provisions of this~~

subchapter. Before the application is granted, the commissioner may hold a hearing at which interested persons may appear.

~~[Sec. 51.197. Failure to Exercise Preferential Right Within Certain Time. (a) If the good-faith claimant does not exercise his preferential right to purchase within 90 days after a decision of the commissioner under the provisions of this subchapter, the applicant shall be awarded an oil, gas, and mineral lease on not more than seven-eighths of the minerals.~~

~~[(b) The consideration for the lease shall not be less than \$1 an acre, and the lease shall be for a primary term set by the board of not more than five years.~~

~~[(c) The lease shall be subject to other consideration and terms required by the board and the preferential right of a good-faith claimant until 90 days after final judicial determination under Section 51.194 of this code.~~

~~[Sec. 51.198. Repayment of Applicant's Expenses. Within 90 days after the commissioner declares the vacancy to exist, the good-faith claimant shall repay to the applicant the expenses incurred in determining the existence of a vacancy, except filing fees, as provided in this subchapter or the good-faith claimant will lose all preferential rights to purchase or lease the land.~~

~~[Sec. 51.199. Judicial Determination of Good-Faith Claimant. If the commissioner fails to determine whether or not there is a good-faith claimant or if his decision is questioned by an applicant or by a person asserting to be a good-faith claimant, the issue shall be determined in any suit brought under this subchapter to determine the existence of the alleged vacancy.~~

~~[Sec. 51.200. Rights of Holders of Title and Holders of Interests in Title of a Claimant. (a) If all owners holding title under the claimant or an interest in the title under which the claimant claims to be a good-faith claimant accept the provisions of this section and contribute their proportionate part of the royalty reserved to the state and the royalty awarded to the applicant, the purchase by the good-faith claimant under the preferential right inures distributively to their benefit.~~

~~[(b) The royalty reservations shall be deducted distributively and proportionately from the mineral interest of each owner including mineral leases if the area is under a mineral lease.~~

~~[(c) As a condition of this subchapter, the good-faith claimant receiving the patent or award or for whose benefit a patent or award is received shall recognize the proportionate interests of other owners who benefit by the award of the preferential right.~~

~~[(d) The consideration for the purchase shall be determined by the board without considering the potential value of minerals or any improvements located on the vacancy but shall not be less than \$1 an acre. The state retains the right to recover from the party or parties liable the market value when produced of all oil, gas, sulphur, or other minerals that may have been produced from the area before the effective date of the patent or award less an offset to the operator for the actual cost of development and production.~~

~~[(c) No mineral lease executed by a good-faith claimant before filing the vacancy claim may give the lessee any interest in or to the vacancy.~~

~~[(f) No title to land or to a mineral interest in land acquired from the state under a preferential right may be held to pass as after-acquired title because of any covenant of general warranty, description, or other provision contained in any conveyance executed before the date of award under the preferential right.~~

~~[Sec. 51.201. Reservation of Minerals. (a) If a good-faith claimant purchases a vacancy located within five miles of a well-producing oil, gas, or other minerals in commercial quantities, not less than a free royalty of one-eighth of all oil, gas, sulphur, and other minerals shall be reserved to the state.~~

~~[(b) If a vacancy that is not covered by Subsection (a) of this section is sold, not less than a free royalty of one-sixteenth of all oil and gas production and one-eighth of all sulphur and other minerals shall be reserved to the state.~~

~~[(c) If a good-faith claimant fails to exercise his preferential right to purchase a vacancy within 90 days after the commissioner determines the existence of the vacancy, the mineral interest reserved by the state shall be not less than a free royalty of one-eighth of the oil and gas and not less than a free royalty of one-sixth of the sulphur and other minerals.~~

~~[(d) The state shall reserve not less than a free royalty of one-eighth of all oil, gas, sulphur, and other minerals on vacancies that are leased by the state as determined by the board.~~

~~[(e) An oil, gas, or other mineral lease on land in which the state reserves a free royalty interest is not effective until a certified copy of the recorded lease is filed in the General Land Office.~~

~~[Sec. 51.202. Mineral Reservations Under Sale Made to Claimant After 90-Day Deadline. If a good-faith claimant does not exercise his preferential right to purchase until after 90 days after the decision of the commissioner determining the existence of a vacancy, the sale made to the claimant shall be subject to a reservation to the state of not less than a free royalty of one-eighth of all oil, gas, sulphur, and other minerals and subject to any lease made by the state to the applicant.~~

~~[Sec. 51.203. Royalty for Applicant. If there is a valid subsisting application previously filed by an applicant on the date that the good-faith claimant files his application to purchase under a preferential right, and if the good-faith claimant exercises his preferential right to purchase within 90 days after the commissioner's decision under this subchapter, a free royalty of one-sixteenth of all oil, gas, sulphur, and other minerals that may be produced from the land shall be added to the royalty interest reserved to the state and shall be awarded by the state to the applicant. The free royalty shall be deducted proportionately from the good-faith claimant's award.~~

~~[Sec. 51.205. Appeal. (a) A person who is aggrieved by any action taken by the commissioner under the provisions of this subchapter or with reference to any application to purchase or lease a vacancy may institute suit in the district court of any county in which part of the land is located~~

to try the issues of boundary, title, ownership of any alleged vacancy involved, and preferential rights of the person.

~~[(b) Within 30 days after the suit is filed, the plaintiff shall have a certified copy of the original petition served on the attorney general and the commissioner by the sheriff or a constable of Travis County and shall have the officer's return filed with the papers in the suit.~~

~~[(c) Whether the attorney general answers or intervenes in the suit or institutes a suit, the venue of all suits following the filing of the application shall be in the county in which the land or part of the land is located.~~

~~[(d) If the litigation is prosecuted to a final judgment, the judgment is binding on the state.~~

~~[(e) The attorney general must intervene on behalf of the state in suits brought under this section.~~

~~[(f) The suit must be filed in accordance with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) relating to appeals from agency decisions.]~~

SECTION 2. Section 118.161, Local Government Code, is amended to read as follows:

Sec. 118.161. FEE SCHEDULE. A county surveyor shall collect the following fees:

(1) for recording the field notes and plat of a survey for a tract of land, providing copies of field notes, plats, or other papers or records, and certifying any copies, the same amount collected by the county clerk of the county as a filing fee;

(2) for surveying a tract of land or designating a homestead:

(A) the actual expenses incurred, including all expenses of making the survey, preparing a survey report, field notes, plat, and other documents required by law, and filing those documents in the records of the county surveyor or the General Land Office; and

(B) any fees for surveying services agreed on by the county surveyor and the person seeking the services; and

(3) for filing an application to purchase or lease a vacancy or for surveying a vacancy, the amounts provided by Subchapter E, Chapter 51, Natural Resources Code. [Inspecting and recording the field notes and plat of a survey for any tract of land:

[(A) less than one-third of a league ..... \$1.00

[(B) one-third of a league ..... \$2.00

[(C) more than one-third of a league ..... \$3.00

[(2) Recording surveys and plats required by law to be placed on the map of a new county, for each 100 words ..... \$0.20

[(3) Examination of papers and records in his office at the request of any person ..... \$0.25

[(4) Copies of all field notes and plats, or other papers or records in the office, for each 100 words, including certificate ..... \$0.20

[(5) Surveying of any tract of land, including all expenses in making the survey, and returning the plat and field notes of the survey:

[(A) for each English lineal mile actually run... \$3.00

[(B) for less than one English lineal mile run ..... \$2.50

~~[(6) Services in designating a homestead, including pay for chain carriers, for each day's service ..... \$5.00]~~

SECTION 3. Subsection (b), Section 72.006, Local Government Code, is amended to read as follows:

(b) A surveyor appointed under this chapter is entitled to receive the actual expenses incurred in making the survey and any fees for surveying services agreed on by the surveyor and the counties ~~[\$3 for each mile surveyed]~~.

SECTION 4. Subsection (a), Section 21.078, Natural Resources Code, is amended to read as follows:

(a) The plane coordinate values for a point on the earth's surface, to be used in expressing the position or location of the point in the appropriate zone, of either system, shall consist of two distances, expressed in U.S. Survey Feet and decimals of a foot or varas or tenths of a vara when using the Texas Coordinate System of 1927 and expressed in meters and decimals of a meter, in U.S. Survey Feet or decimals of a foot, or in varas or tenths of a vara when using the Texas Coordinate System of 1983.

SECTION 5. (a) The change in law made by this Act applies only to an application to purchase or lease a vacancy under Subchapter E, Chapter 51, Natural Resources Code, that is filed with a county surveyor or county clerk on or after the effective date of this Act.

(b) An application filed before that date is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 1993.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### Floor Amendment No. 1

Amend C.S.S.B. 964 as follows:

1. On page 45, before Section 6, insert the following section and renumber the sections following accordingly:

SECTION 9. Section 51.121, Natural Resources Code, is amended to add Subsection (e) to read as follows:

Section 51.121. LEASE OF UNSOLD LAND. (e) Subject to the provisions of Article 1446c V.T.C.S., any district created by Section 59 of Article 16 of the Constitution of the State of Texas that leases unsold public school or asylum land for power generation through the use of renewable energy sources, such as wind, solar, or geothermal energy and other sustainable sources, or a district participating in a power generation project using renewable energy sources which is located on unsold public school or asylum lands may distribute and sell electric energy generated on public school or asylum lands within or without the boundaries of the district and may issue bonds to accomplish such purposes pursuant to Article 717g V.T.C.S. or other applicable law. For any such power generation project which is located on both public lands and private lands,

the district may sell outside its boundaries only the pro rata portion of the total amount as is generated on the public lands. All electric energy generated pursuant to this section shall be sold for resale only to utilities authorized to make retail sales under Article 1446c V.T.C.S. and shall be subject to the solicitation process and integrated resource planning process authorized by that Article.

**Floor Amendment No. 2**

Amend C.S.S.B. 964 by adding a new section \_\_\_\_\_ to read as follows:

SECTION \_\_\_\_ Subchapter B, Chapter 51, Natural Resources Code is amended by adding a new section as follows:

Sec. 51.0125. Land that belongs to the permanent school fund as a result of having been deeded or given to the state and that has been used in the past by a state agency shall be first offered for sale or lease to state agencies before it can be sold or leased to any other party. No permanent school fund land may be used by a state agency without fair market value compensation to the permanent school fund.

**Amendment No. 3**

Amend C.S.S.B. 964 as follows:

1. On page 45, line 14, between "by" and "this" insert the following: "Sections 1 through 4 of".

2. On page 45, before Section 6, insert the following sections and renumber the sections following accordingly:

SECTION 6. Section 5.115, Water Code, is amended to read as follows:

Section 5.115. NOTICE OF APPLICATION. (a) At the time an application for a permit or license under this code is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license.

(b) At the time an application for any formal action by the commission that will affect lands dedicated to the permanent school fund is filed with the executive director or the commission and is administratively complete, the commission shall give notice of the application to the school land board. Notice shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office. Delivery is not complete until the return receipt is signed by the deputy commissioner of the asset management division of the General Land Office and returned to the commission.

(c) The commission shall adopt rules for the notice required by this section.

(d) [(e)] The notice must state:

(1) the identifying number given the application by the commission;

(2) the type of permit or license sought under the application;

(3) the name and address of the applicant;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the permit application.

(e) The notice to the School Land Board under this section shall additionally:

(1) state the location of the permanent school fund land to be affected; and

(2) describe any foreseeable impact or effect of the commission's action on permanent school fund land.

(f) A formal action or ruling by the commission on an application affecting permanent school fund land that is made without the notice required by this section is voidable by the School Land Board as to any permanent school fund lands affected by the action or ruling.

SECTION 7. Subchapter D, Chapter 11, Natural Resources Code is amended by adding Section 11.082 to read as follows:

Sec. 11.082. Notice to School Land Board. (a) A state agency or political subdivision may not formally take any action that may affect state land dedicated to the permanent school fund without first giving notice of the action to the board. Notice of the proposed action shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office on or before the state agency's or political subdivision's formal initiation of the action.

(b) The notice must:

(1) describe the proposed action;

(2) state the location of the permanent school fund land to be affected; and

(3) describe any foreseeable impact or effect of the state agency's or political subdivision's action on the permanent school fund land.

(c) An action taken by a state agency or political subdivision without the notice required by Subsection (a) of this section that affects state land dedicated to the permanent school fund is not effective as to permanent school fund land affected by the action.

(d) In this section:

(1) "Action" means:

(A) formal adoption of an agency or political subdivision policy;

(B) final adoption of an administrative rule;

(C) issuance of findings of fact or law;

(D) issuance of an administrative order in an administrative hearing; or

(E) adoption of a local ordinance or resolution.

(2) "Board" means the School Land Board.

(3) "Initiation" means the commencement of the first phase of public consideration of a formal policy, rule, or ordinance, or a hearing undertaken by a state agency or political subdivision that is intended to result in final adoption of a formal policy, rule, or ordinance.

(4) "Political subdivision" means a county, public school district, or special-purpose district or authority.

(5) "State agency" means:

(A) a department, commission, board, office, bureau, council, or other agency in the executive branch of state government other than the Texas Department of Transportation and the Railroad Commission of Texas; or

(B) a university system or an institution of higher education as defined in Section 61.003, Education Code.

SECTION 8. Section 32.112, Natural Resources Code, is amended to read as follows:

Sec. 32.112. SALE OF TAX FORECLOSURE PROPERTY. (a) All real property or any interest in real property placed in the name of the state as a result of a tax foreclosure sale may be sold or leased by the board in the same manner as provided for the sale or lease of land under Chapter 51 of this code. [The board may sell by sealed bid all real property placed in the name of the state as a result of any tax foreclosure sale. The sealed bid sales shall be conducted in the same manner as sealed bid sales for public school land.]

(b) The board may retain from the proceeds of a sale or lease conducted under this section the cost of conducting the transaction [sale], including advertising, appraisal, and administrative costs. The balance of the proceeds shall be deposited in the State Treasury to the credit of the Texas capital trust fund.

SECTION 9. Section 33.015, Natural Resources Code, is amended to read as follows:

Sec. 33.015. SPECIAL ACCOUNT [FUND]. (a) A dedicated account [special fund] is created, and money received by the board for the grant of permits under this chapter shall be deposited in the State Treasury to the credit of this dedicated account [special fund].

(b) Sections 403.094(h) and 403.095(b), Government Code, do not apply to the dedicated account created under this section.

SECTION 10. Section 33.131, Natural Resources Code, is amended to read as follows:

Sec. 33.131. STRUCTURES AS PROPERTY OF THE STATE. A structure presently existing or to be constructed in the future for which a permit is required under Section 33.119 of this code [subchapter] is the property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited.

SECTION 11. Subchapter D, Chapter 33, Natural Resources Code, is amended by adding Section 33.135 to read as follows:

Section 33.135. NOTICE TO PURCHASER OR GRANTEE OF COASTAL AREA PROPERTY. (a) A person who sells, transfers, or conveys an interest other than a mineral, leasehold, or security interest in real property adjoining and abutting the tidally influenced waters of the state must include the following notice as a part of a written executory contract for the sale, transfer, or conveyance:

"NOTICE REGARDING COASTAL AREA PROPERTY

"(1) The real property described in and subject to this contract adjoins and shares a common boundary with the tidally influenced



submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the property described in this contract may gain or lose portions of the tract because of changes in the boundary.

"(2) The seller, transferor, or grantor has no knowledge of any prior fill as it relates to the property described in and subject to this contract.

"(3) State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.

"(4) The purchaser or grantee is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the surveying division of the General Land Office in Austin."

(b) If property described under Subsection (a) of this section is sold, transferred, or conveyed without an executory contract for conveyance, a written statement containing notice prescribed by that subsection must be delivered to the grantee for execution and acknowledgement of receipt before the conveyance is recorded.

(c) Failure to include the statement in an executory contract for conveyance shall be grounds for the purchaser to terminate such contract, and upon termination any earnest money shall be returned to the party making the deposit.

(d) Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute a deceptive act under Section 17.46, Business and Commerce Code.

(e) This section or the action of any party subject to this section does not diminish or modify the beach access and use rights of the public as acquired by statute or under common law.

SECTION 12. Section 51.052, Natural Resources Code, is amended by amending Subsections (e) and (f) and adding Subsection (i) to read as follows:

(e) The owner of land that surrounds land in a tract of 700 ~~320~~ acres or less shall have a preference right to purchase the tract before the land is made available for sale to any other person, provided the person having the preference right pays not less than the market value for the land as determined by the board.

(f) If the surrounding land is owned by more than one person, the owners of land with a common boundary with a tract of 700 ~~320~~ acres or less that is for sale shall have a preference right to purchase the tract before it is made available to any other person, provided the person with the preference right pays not less than the market value of the land as determined by the board and the board finds use of the preference to be

in the best interest of the state. The board shall adopt rules to implement this preference right.

(i) If no bid meeting minimum requirements is received for a tract of land offered at a sealed bid sale under Subchapter D, Chapter 32, of this code, the asset management division of the land office may solicit proposals or negotiate a sale, exchange, or lease of the property to any person. The sales price may not be less than the appraised value of the land as determined by the asset management division. The board must approve any negotiated sale, exchange, or lease of any land under this section.

SECTION 13. Section 51.291, Natural Resources Code, is amended to read as follows:

Section 51.291. GRANTS OF EASEMENTS. (a) Except as provided by Subsection (b) of this section, the [The] commissioner may execute grants of easements for rights-of-way across, through, and under unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, the state-owned riverbeds and beds of navigable streams in the public domain, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for:

- (1) telephone, telegraph, electric transmission, and powerlines;
- (2) oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature;
- (3) irrigation canals, laterals, and water pipelines;
- (4) roads; and
- (5) any other purpose the commissioner considers to be in the best interest of the state.

(b) Consent to conduct an activity that would disturb or remove marl, sand, gravel, shell, or mudshell on or near the surface of a state-owned riverbed or the bed of a navigable stream in the public domain may be granted only under Chapter 86, Parks and Wildlife Code.

(c) Money received by the land office for the grants of easements through and under the state-owned riverbeds and beds of navigable streams in the public domain shall be deposited in a special fund account in the State Treasury to be used for the removal or improvement of unauthorized structures on permanent school fund land. This fund does not impose a duty or obligation on the state to accept ownership of, remove, or improve unauthorized structures on permanent school fund land.

SECTION 14. Section 51.302, Natural Resources Code, is amended to read as follows:

Sec. 51.302. PROHIBITION AND PENALTY. (a) No person may construct or maintain any structure or facility on land [of the facilities listed in Sections 51.291 through 51.293 of this code or any other facility on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and] owned by the state, nor may any person who has not acquired a proper easement, lease, permit, or other instrument from the state as required by Chapter 33

~~or 51 of this code [provided in this subchapter] and who owns or possesses a [any of the facilities listed in Sections 51.291 through 51.293 of this code or any other] facility or structure that is now located on or across [any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the] state land~~ continue in possession of the land unless he obtains from the commissioner, ~~the board~~ or the board of regents ~~an easement, lease, permit, [a grant of a right-of-way easement] or other instrument required by this chapter or Chapter 33 of this code [easement]~~ for the land on which the facility or structure is to be constructed or is located.

(b) A person who constructs, maintains, owns, or possesses a facility or structure on state land without a proper easement or lease from the state under ~~this chapter or under Chapter 33 [or 51]~~ of this code is liable for a penalty of not less than \$50 or more than \$1,000 a day for each day that a violation occurs. The penalty shall be recovered by the commissioner under Section 51.3021 of this code or in a civil action by the attorney general.

(c) A person who owns, maintains, or possesses an ~~unauthorized [abandoned]~~ facility or structure is, for purposes of this section, the person who last owned, maintained, or possessed the facility or structure ~~[immediately before abandonment]~~.

(d) The commissioner or attorney general may also recover from a person who constructs, maintains, owns, or possesses a facility or structure on state land without the proper easement the costs to the state of removing that facility or structure under Section 51.3021 of this code.

(e) Penalties and costs recovered under this section shall be deposited in the special fund established under Sections 52.297 and 53.155 of this code.

(f) This section is cumulative of all other applicable penalties or enforcement provisions of this code.

~~(g) In lieu of seeking administrative penalties or removal of the facility or structure under Section 51.3021 of this code, the commissioner may elect to accept ownership of the facility or structure as a fixture and may exercise the state's rights as owner of the facility or structure by filing notice of ownership in the real property records of the county in which the facility or structure is located. For facilities or structures located on coastal public land, notice of ownership shall be filed in the county adjacent to the property on which the facility or structure is located. A notice under this subsection shall contain a legal description of the adjacent property, the owner of property if known, and a description of the facility or structure. A state agency fund or trust fund is not liable for the condition of any facility or structure as a result of acquiring an interest in the facility or structure under this section.~~

SECTION 15. Subsection (b), (g), and (h), Section 51.3021, Natural Resources Code, are amended to read as follows:

(b) Before the commissioner may remove a facility or structure under this section or impose a penalty under Section 51.302 of this code, the commissioner must give written notice to a person who is constructing,

maintains, owns, or possesses the facility or structure. The notice must state:

(1) the specific facility or structure that is without proper easement or lease or that threatens public health, safety, or welfare;

(2) that the person who is constructing, maintains, owns, or possesses the facility or structure shall remove the facility or structure:

(A) not later than the 30th day after the date on which the notice is served, if the facility or structure is on state land without a proper lease or easement; or

(B) within a reasonable time specified by the commissioner if the facility or structure is an imminent and unreasonable threat to public health, safety, or welfare;

(3) that failure to remove the facility or structure may result in liability for a penalty under Section 51.302(b) of this code in an amount specified, removal by the commissioner and liability for the costs of removal, attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs of removal, or any combination of such remedies [both]; and

(4) that the person who is constructing, maintains, owns, or possesses the facility or structure may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(g) The commissioner may contract for the removal and disposal of a facility or structure under this section and may pay the costs of removal from the special fund established under Sections 52.297 and 53.155 of this code or from funds appropriated by the legislature.

(h) If the person who is constructing, maintains, owns, or possesses the facility or structure does not pay assessed penalties, removal costs, and other assessed fees and expenses not later than the 60th day after the entry of the final order assessing the penalties, costs, and expenses, the commissioner may:

(1) sell salvageable parts or attachments of the facility or structure to offset those costs;

(2) record a lien, in the total amount of the penalties, costs, and other fees and expenses assessed, against the adjacent littoral property;

(3) request the Attorney General to institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or

(4) use any combination of the remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed on account of the unauthorized facility or structure on state land and its removal by the commissioner.

(i) The lien authorized by this section arises and attaches at the time a notice of lien is recorded and indexed in the real property records in the county where the adjacent littoral property is located. The notice of lien must contain a legal description of the adjacent littoral property, the name of the owner of the adjacent littoral property if known, and the total amount of the penalties, costs, and other fees. The lien is subordinate to the rights of prior bona fide purchasers or lienholders on the adjacent littoral property.

(j) ~~(b)~~ The decision to remove a facility or structure under this section is discretionary with the commissioner. This section does not impose a duty on the state to remove a facility or structure or to remedy or warn of a hazardous condition on state land.

SECTION 16. Section 51.401, Natural Resources Code, is amended by adding Subsection (e) to read as follows:

(e) Section 403.094 and 403.095, Government Code, do not apply to a fund account created under this section.

SECTION 17. (a) The change in law made by Section 5.115, Water Code, as amended by this Act, applies only to an application filed with the Texas Water Commission or its successor on or after the effective date of this Act.

(b) The change in law made by Section 11.082, Natural Resources Code, as added by this Act, applies to an action, as defined by that section, that is pending before a state agency or political subdivision, as defined by that section, on the effective date of this Act.

(c) The change in law made by Section 33.135, Natural Resources Code, as added by this Act, applies only to a transfer that occurs on or after the effective date of this Act.

(d) The change in law relating to the attachment of a lien made by Section 51.3021, Natural Resources Code, as amended by this Act, applies only to a penalty imposed or costs of removal assessed on or after the effective date of this Act.

#### **Floor Amendment No. 1 on Third Reading**

Amend C.S.S.B. 964 at line 3, page 25, and line 6, page 25, by inserting in both lines the words "and sulphur" after the word "gas."

#### **Floor Amendment No. 2 on Third Reading**

Amend C.S.S.B. 964 by adding a new Section 2 to read as follows and renumbering the succeeding sections:

SECTION 2: Section 51.206, Natural Resources Code, is repealed.

The amendments were read.

On motion of Senator Sims and by unanimous consent, the Senate concurred in the House amendments to S.B. 964 by a viva voce vote.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 680**

Senator Turner called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 680 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on H.B. 680 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; Harris of Tarrant, Sims, Barrientos, and Carriker.

**CONFERENCE COMMITTEE ON HOUSE BILL 1493**

Senator Turner called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1493** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1493** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; West, Sibley, Brown, and Whitmire.

**SENATE BILL 987 WITH HOUSE AMENDMENT**

Senator Turner called **S.B. 987** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment No. 1**

Amend **S.B. 987** by adding the following appropriately numbered section:

SECTION \_\_\_\_\_. Sec. 4.02.053(b), Local Government Code, is amended to read as follows:

(b) the following may be exempt:

(1) this state;

(2) a county;

(3) a municipality;

(4) a school district;

(5) property owned by a religious organization that is exempt from taxation pursuant to Sec. 11.20, Tax Code.

The amendment was read.

Senator Turner moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 987** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; Wentworth, Zaffirini, Sims, and Luna.

**SENATE BILL 1234 WITH HOUSE AMENDMENT**

Senator Turner called S.B. 1234 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend S.B. 1234 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the consolidation and dedication of certain funds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 361.133(a), Health and Safety Code, is amended to read as follows:

(a) The hazardous and solid waste remediation fee fund is in the state treasury. The fund is exempt from the application of Sections 403.094(h) and 403.095, Government Code.

SECTION 2. Section 382.0622(b), Health and Safety Code, is amended to read as follows:

(b) Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air fund and shall be used to safeguard the air resources of the state. The fund is exempt from the application of Sections 403.094(h) and 403.095, Government Code. ~~[All unexpended and unobligated money remaining in the fund on the last day of each fiscal biennium shall be transferred to the credit of the general revenue fund.]~~

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Turner moved that the Senate do not concur in the House amendment but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on S.B. 1234 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; Truan, Barrientos, Armbrister, and Sims.

**SENATE BILL 1058 WITH HOUSE AMENDMENTS**

Senator Armbrister called S.B. 1058 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend S.B. 1058 by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to fees imposed and collected and other revenue received by agencies of state and local government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 431.241, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The department may assess a fee for the issuance of a certificate of free sale and another certification issued under this chapter. The board by rule shall set each fee in an amount sufficient to recover the cost to the department of issuing the particular certificate.

SECTION 2. Section 11A(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Each of the following fees imposed by or under another section of this Act is increased by \$200:

(1) fee for filing an original application for an individual [x] real estate broker license; and

(2) fee for annual renewal of an individual [x] real estate broker license.

SECTION 3. (a) Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.425 to read as follows:

Art. 17.425. BOND APPROVAL FEE. (a) A person released on bond, except a personal recognizance bond, following an arrest for a felony or misdemeanor, except an arrest for a Class C misdemeanor traffic violation, shall pay \$25 for the services of a peace officer for taking and approving a bond and, if necessary, returning the bond to the courthouse.

(b) The fees collected under this article shall be deposited in the county treasury of the collecting county. The county commissioners court may use those fees to pay claims against the county resulting from litigation concerning the collection of bail bond or other criminal justice approval fees or, if no claims against the county exist or all claims have been satisfied, for any purpose for which money deposited to the general fund to help defray the costs of administration of the county criminal justice system may be used.

(b) Article 102.011 (a), Code of Criminal Procedure, is amended to read as follows:

(a) A defendant convicted of a misdemeanor shall pay the following fees for services performed by a peace officer:



(1) \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law of this state, or for making an arrest without a warrant;

(2) \$35 for executing or processing an issued arrest warrant or capias, with the fee imposed for the services of:

(A) the law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of execution of the arrest warrant or capias, the imposition of the fee on conviction; or

(B) the law enforcement agency that processed the arrest warrant or capias, if the executing law enforcement agency failed to request the fee within the period required by Paragraph (A) of this subdivision;

(3) \$5 for summoning a witness;

(4) \$35 for serving a writ not otherwise listed in this article;

(5) ~~[\$10 for taking and approving a bond and, if necessary, returning the bond to the courthouse;~~

~~(6)]~~ \$5 for commitment or release;

~~(6)~~ ~~[(7)]~~ \$5 for summoning a jury, if a jury is summoned; and

~~(7)~~ ~~[(8)]~~ \$8 for each day's attendance of a prisoner in a habeas corpus case if the prisoner has been remanded to custody or held to bail.

(c) The change in law made by this section applies only to the release on bond for an arrest for an offense committed on or after the effective date of this section. For purposes of this subsection, an offense is committed before the effective date of this section if any element of the offense occurs before that date.

(d) Release on bond for an arrest for an offense committed before the effective date of this section is governed by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) Section 1 of this Act takes effect September 1, 1993.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

#### Floor Amendment No. 1

Amend C.S.S.B. 1058 as follows:

(1) Insert the following sections and renumber subsequent sections accordingly.

SECTION \_\_\_\_\_. Section 118.0216, Local Government Code, is amended to read as follows:

Sec. 118.0216. RECORDS MANAGEMENT AND PRESERVATION.

(a) The fee for "Records Management and Preservation" under Section 118.011 is for the records management and preservation services performed

by the county as required by Chapter 203 [clerk] after the filing of a document that is required or permitted to be filed in the following records:

- (1) real property records;
- (2) personal property records;
- (3) personal records;
- (4) cattle brand registration records;
- (5) assumed names;
- (6) bonds; and
- (7) financing statements and related instruments established by the

Business & Commerce Code that are filed in the real property records.

(b) This fee does not apply to:

- (1) marriage records;
- (2) financing statements and related instruments established by the
- Business & Commerce Code that are not filed in the real property records;
- (3) budgets and notices of posting; or
- (4) any document for which a filing fee is prohibited by statute.

(c) This [and recording of a document in the records of the office of the clerk. The] fee must be paid at the time of the filing of the document. The fee shall be placed in a special fund to be called the "Records Management and Preservation Fund" and [may be] used only [to provide funds] for [specific] records management, preservation, or [and] automation purposes [projects] in the county. The fee may be set only once a year, before August 1, by the commissioners court, taking effect on September 1 of that same year. The fee may not exceed \$5 for each document filed.

(d) No expenditures may be made from the fund without prior approval of the commissioners court.

SECTION \_\_\_\_\_. Section 118.052, Local Government Code, is amended to read as follows:

Sec. 118.052. FEE SCHEDULE. Each clerk of a county court shall collect the following fees for services rendered to any person:

(1) CIVIL COURT ACTIONS

(A) Filing of Original Action (Sec. 118.053):

- (i) Garnishment after judgment ..... \$15.00
- (ii) All others ..... \$40.00

(B) Filing of Action Other than Original (Sec. 118.054) ..... \$30.00

(C) Services Rendered After Judgment in Original Action (Sec. 118.0545):

- (i) Abstract of judgment ..... \$5.00
- (ii) Execution, order of sale, writ, or other process. \$5.00

(2) PROBATE COURT ACTIONS

(A) Probate Original Action (Sec. 118.055):

- (i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title \$35.00

- (ii) Community survivors ..... \$20.00

- (iii) Small estates ..... \$10.00

- (iv) Affidavits of heirship ..... \$10.00

- (v) Mental health or chemical dependency services ..... \$ 40.00
- (vi) Additional, special fee (Sec. 118.064) ..... \$ 3.00
- (B) Services in Pending Probate Action (Sec. 118.056):
  - (i) Filing and recording a document:
    - for the first page ..... \$ 3.00
    - for each additional page or part of a page ..... \$ 2.00
  - (ii) Approving and recording bond ..... \$ 3.00
  - (iii) Administering oath ..... \$ 2.00
- (C) Adverse Probate Action (Sec. 118.057) ..... \$ 35.00
- (D) Claim Against Estate (Sec. 118.058) ..... \$ 2.00
- (3) OTHER FEES
  - (A) Issuing Document Requiring a Return, No Pending Action (Sec. 118.059):
    - original document and one copy ..... \$ 4.00
    - each additional set of an original and one copy ..... \$ 4.00
  - (B) Certified Papers, No Return Required (Sec. 118.060):
    - for the clerk's certificate ..... \$ 1.00
    - plus a fee per page or part of a page of ..... \$ 1.00
  - (C) Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (Sec. 118.061) ..... \$ 2.00
  - (D) Safekeeping of Wills (Sec. 118.062) ..... \$ 5.00
  - (E) Mail Service of Process (Sec. 118.063) same as sheriff
  - (F) Records Management and Preservation fee ..... \$ 5.00

SECTION \_\_\_\_\_. Subchapter C, Chapter 118, Local Government Code, is amended by adding Section 118.0546 to read as follows:

Sec. 118.0546. RECORDS MANAGEMENT AND PRESERVATION FEE—CIVIL CASES. (a) The fee for "Records Management and Preservation" under Section 118.052 is for the records management and preservation services performed by the county as required by Chapter 203.

(b) The fee shall be assessed as cost and must be paid at the time of filing any civil case or ancillary pleading thereto.

(c) The fee shall be placed in a special fund to be called the "Records Management and Preservation Fund."

(d) The fee shall be used only for records management and preservation purposes in the county. No expenditure may be made from this fund without prior approval of the commissioners court.

SECTION \_\_\_\_\_. Subchapter C, Chapter 118, Local Government Code, is amended by adding Section 118.0645 to read as follows:

Sec. 118.0645. RECORDS MANAGEMENT AND PRESERVATION FEE—PROBATE CASES. (a) The fee for "Records Management and Preservation" under Section 118.052 is for the records management and preservation services performed by the county as required by Chapter 203.

(b) The fee shall be assessed as cost and must be paid at the time of filing any probate case or adverse probate action.

(c) The fee shall be placed in a special fund entitled "Records Management and Preservation Fund."

(d) The fee shall be used only for records management and preservation purposes in the county as required by Chapter 203. No

expenditure may be made from this fund without prior approval of the commissioners court.

SECTION \_\_\_\_\_. Section 203.003, Local Government Code, is amended to read as follows:

Sec. 203.003. DUTIES OF COMMISSIONERS COURT. The commissioners court of each county shall:

(1) promote and support the efficient and economical management of records of all elective offices in the county to enable elected county officers to conform to this subtitle and rules adopted under it;

(2) facilitate the creation and maintenance of records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of each elective office and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and the persons affected by the activities of the local government;

(3) facilitate the identification and preservation of the records of elective offices that are of permanent value; ~~and~~

(4) facilitate the identification and protection of the essential records of elective offices; and

(5) establish a records management and preservation fund and expend money in the fund under the county budget for purposes authorized by this chapter.

SECTION \_\_\_\_\_. Section 51.317, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The fees are:

- (1) for filing a suit, including an appeal from an inferior court ..... \$ 45
- (2) for filing a cross-action, intervention, contempt action, or motion for new trial ..... \$ 15
- (3) for issuing a subpoena, including one copy, when requested at the time a suit or action is filed ..... \$ 4
- (4) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed ..... \$ 8
- (5) for issuing an additional copy of a process not otherwise provided for, when requested at the time a suit or action is filed ..... \$ 4.
- (6) for the records management and preservation fund ..... \$ 5.

(c) The district clerk, after collecting a fee under Subsection (b)(6), shall pay the fee to the county treasurer, or to an official who discharges the duties commonly delegated to the county treasurer, for deposit in the records management and preservation fund.

SECTION \_\_\_\_\_. Article 102.005, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) A defendant convicted of an offense in a county court, a county court at law, or a district court shall pay a fee of \$10 for records management and preservation services performed by the county as required by Chapter 203, Local Government Code. The fee shall be collected and distributed by the clerk of the court in the same manner as fees are collected and distributed under Section 51.317(c), Government Code. The

fee received by a county shall be placed in a special fund to be called the "Records Management and Preservation Fund." The fee shall be used only for records management and preservation purposes in the county as required by Chapter 203, Local Government Code. No expenditures may be made from this fund without prior approval of the commissioners court.

**Amendment No. 1 on Third Reading**

Amend the Eckels amendment to C.S.S.B. 1058 as follows:

(1) In Section \_\_\_\_ of the bill, added Section 118.0546(b), Local Government Code, strike "or ancillary pleading thereto"

(2) In Section \_\_\_\_, added Article 102.005(d), Code of Criminal Procedure, between "district court" and "shall", insert "or granted deferred adjudication".

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on S.B. 1058 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Montford, Moncrief, Haley, and Ellis.

**SENATE BILL 684 WITH HOUSE AMENDMENT**

Senator Armbrister called S.B. 684 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend S.B. 684 by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to the regulation of emissions from an agricultural operation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 382.003, Health and Safety Code, is amended to read as follows:

Sec. 382.003. DEFINITIONS. In this chapter:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) "Agricultural operation" includes:

(A) cultivating the soil;

(B) producing crops for human food, animal feed, planting seed, or fiber;

(C) floriculture;

(D) viticulture;

(E) horticulture;

(F) raising or keeping livestock or poultry; and

(G) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(3) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(4) ~~(3)~~ "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or enjoyment of animal life, vegetation, or property.

(5) ~~(4)~~ "Board" means the Texas Natural Resource Conservation Commission.

(6) ~~(5)~~ "Executive director" means the executive director of the board.

(7) ~~(6)~~ "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(8) ~~(7)~~ "Federal source" means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) and includes:

(A) an affected source as defined by Section 402 of the federal Clean Air Act (42 U.S.C. Section 7651a) as added by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602); and

(G) any other stationary source in a category designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(9) [(8)] "Local government" means a health district established under Chapter 121, a county, or a municipality.

(10) [(9)] "Modification of existing facility" means any physical change in, or change in the method of operation of, a stationary source in a manner that increases the amount of any air pollutant emitted by the source into the atmosphere or that results in the emission of any air pollutant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air pollutant emitted that is authorized by one or more board exemptions;

(B) insignificant increases at a permitted facility; or

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere.

(11) [(10)] "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(12) [(11)] "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(13) [(12)] "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

(14) [(13)] "Well test" means the testing of an oil or gas well for a period of time less than 72 hours that does not constitute a major source or major modification under any provision of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

SECTION 2. Section 382.057, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) Air contaminant emissions from an agricultural operation, except emissions from an agricultural operation that is required to obtain a federal operating permit under this subchapter or is subject to regulations adopted under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Section 7411 or 7412), are exempt from the permitting requirements of this subchapter, unless based on the board's review of the agricultural operation's particular practices, the board finds that the emissions from the agricultural operation have caused or are causing in the immediate vicinity of the agricultural operation:

(1) a specific bodily injury to a member of the public; or

(2) a substantial adverse effect to the health or safety of the public.

SECTION 3. Subchapter D, Chapter 382, Health and Safety Code, is amended by adding Section 382.0905 to read as follows:

Sec. 382.0905. ENFORCEMENT AGAINST CERTAIN AGRICULTURAL OPERATIONS. (a) Air contaminant emissions from an agricultural operation, except emissions from an agricultural operation that

is required to obtain a federal operating permit under Subchapter C or is subject to regulations adopted under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Section 7411 or 7412), are exempt from this subchapter unless:

(1) the board finds that the emissions from the agricultural operation have caused or are causing in the immediate vicinity of the agricultural operation:

(A) a specific bodily injury to a member of the public; or

(B) a substantial adverse effect to the health or safety of the public; or

(2) the board finds a member of the public who suffered a specific bodily injury caused by the emissions or whose health or safety has been substantially adversely affected by the emissions has continuously resided in the immediate vicinity of the agricultural operation beginning before the agricultural operation was established.

(b) The board may not issue a notice of violation to an agricultural operation that is not required to obtain a federal operating permit under Subchapter C and is not subject to regulations adopted under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Section 7411 or 7412) unless the board makes a finding as provided by Subsection (a). The board shall include with a notice of violation issued under this subsection a statement of the reasoning and specific information on which the board relied in making its finding.

(c) If a violation of this chapter or of a board rule or order relates to an emission of air contaminants from an agricultural operation that is not required to obtain a federal operating permit under Subchapter C and is not subject to regulations adopted under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Section 7411 or 7412), the board may not issue an order under this chapter to enforce the violation unless:

(1) the board finds by a preponderance of the evidence that the emissions have caused or are causing in the immediate vicinity of the agricultural operation:

(A) a specific bodily injury to a member of the public; or

(B) a substantial adverse effect to the health or safety of the public; or

(2) the board finds a member of the public who suffered a specific bodily injury caused by the emissions or whose health or safety has been substantially adversely affected by the emissions has continuously resided in the immediate vicinity of the agricultural operation beginning before the agricultural operation was established.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.



Senator Armbrister moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 684** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Sims, Shapiro, Haley, and Bivins.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 798 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **S.B. 798**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1993.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1132 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **S.B. 1132**. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1993.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE ON HOUSE BILL 1158**

Senator Henderson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1158** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1158** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Henderson, Chair; Montford, Armbrister, Harris of Dallas, and Shelley.

**CONFERENCE COMMITTEE ON HOUSE BILL 2049**

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2049** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2049** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Carriker, Truan, Lucio, and Shelley.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 546**

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 546** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 546** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Harris of Tarrant, Henderson, West, and Zaffirini.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2067**

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2067** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2067** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Whitmire, Rosson, Henderson, and Patterson.

#### **SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The Presiding Officer announced the time had arrived to consider the executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Barrientos.

Senator Barrientos moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The Presiding Officer asked if there were requests to sever nominees.

There were no requests offered.

**NOMINEES CONFIRMED**

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Member, Texas State Board of Chiropractic Examiners: DR. CARROLL VANDINE GUICE, Gregg County.

Members, Stephen F. Austin State University Board of Regents: RON ADKISON, Rusk County; SIMON LYNN MONTES, Angelina County; MURRAY SHAW, Travis County.

Member, Public Safety Commission: RONALD D. KRIST, Harris County.

Members, State Board of Dental Examiners: ELIZABETH HERNANDEZ, Harris County; GLENNA H. JOHNS, Collin County; DR. ROMEO H. LEWIS, JR., Dallas County; DR. GLENDA F. SMITH, Travis County; NANCY ANN TIBBETS, Johnson County; DR. THOMAS R. URIBE, Bexar County; DR. WILFRED D. WHITESIDE, Nueces County.

Member, Texas State Board of Chiropractic Examiners: NANCY D. BRANNON, Cooke County.

Members, Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids: JOYCIE L. BURNS, Freestone County; JANE WOFFORD PORTER, Dallas County; DIANE CECILE SHAFFER, Jefferson County; DR. RICHARD W. STREAM, Denton County.

Members, Texas State Board of Pharmacy: CHARLIE BELLINGER BETHEA, Harris County; JEANETTE H. COFFIELD, Jasper County; MARINA P. SIFUENTES, Travis County.

Members, Texas State Board of Podiatry Examiners: DR. THOMAS S. GARRISON, Harris County; ANA MARIA LABORDE, Bexar County; DR. J. MICHAEL VALENZA, Travis County.

Member, School Land Board (Appointed by the Attorney General of Texas): WILLIAM F. WARNICK, Lubbock County.

Members, State Committee of Examiners for Speech-Language Pathology and Audiology: CHARLES K. KURATKO, Lubbock County; TERI MATA-PISTOKACHE, Hidalgo County; JANE DEAN McCONNELL, Dallas County.

Members, State Board of Veterinary Medical Examiners: DR. JAMES N. GOMEZ, Cameron County; JOYCE G. SCHIFF, Dallas County; DR. JOHN A. WOOD, Angelina County.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 274 ADOPTED**

Senator Barrientos called from the President's table the Conference Committee Report on S.B. 274. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1993.

On motion of Senator Barrientos, the Conference Committee Report was adopted by a viva voce vote.

**SENATE BILL 628 WITH HOUSE AMENDMENT**

Senator Harris of Tarrant called **S.B. 628** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1**

Amend **S.B. 628**, page 1, line 17, by adding the phrase "Interest charged at a variable rate is not a sum certain." after the period.

The amendment was read.

Senator Harris of Tarrant moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 628** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris of Tarrant, Chair; Henderson, Armbrister, Shelley, and Ellis.

**SENATE BILL 966 WITH HOUSE AMENDMENT**

Senator Sims called **S.B. 966** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend **S.B. 966** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to notice given to landowners by a common carrier.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 111.019, Natural Resources Code, is amended to read as follows:

Sec. 111.019. RIGHT OF EMINENT DOMAIN. (a) Common carriers have the right and power of eminent domain.

(b) In the exercise of the power of eminent domain granted under the provisions of Subsection (a) of this section, a common carrier may enter on and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of the common carrier pipeline.

(c) Upon written request by a resident or owner of land crossed by a common carrier pipeline, the common carrier must disclose material data

safety sheets concerning the commodities transported by the common carrier required by the commission and the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.). Such disclosure must be in writing and must be mailed or delivered to the resident or landowner within 30 days of receipt of the request.

SECTION 2. Section 111.139, Natural Resources Code, is amended to read as follows:

Sec. 111.139. REPORTS. (a) The commission shall require each common carrier to make reports including duly verified monthly reports of:

(1) the total quantities of crude petroleum owned by the common carrier in the state;

(2) the total quantities of crude petroleum held by the common carrier in storage for others in the state; and

(3) the common carrier's unfilled storage capacity.

(b) The commission shall give no publicity to the stock of crude petroleum on hand of any particular common carrier, but the commission may, in its discretion, make public the aggregate amounts held by all common carriers making reports and their aggregate storage capacity.

(c) The commission shall require each common carrier to mail, return receipt requested, a copy of all spill, or leak reports required by the commission to residents or owners of land upon which a spill, or leak has occurred within 30 days of filing the report with the commission. If a resident or owner of land has not registered with the commission, the common carrier is relieved of the requirement to mail copies of spill, or leak reports to the resident or landowner. The commission shall provide a procedure for residents and owners of land crossed by a common carrier pipeline to voluntarily register their names and mailing addresses with the commission.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring rules to be read on three several in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Sims and by unanimous consent, the Senate concurred in the House amendment to S.B. 966 by a viva voce vote.

#### CONFERENCE COMMITTEE ON HOUSE BILL 1185

Senator Shelley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 1185 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on H.B. 1185 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shelley, Chair; Henderson, Armbrister, Shapiro, and Brown.

#### **SENATE RULE 12.09(a) SUSPENDED**

On motion of Senator Shelley and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on H.B. 2116.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2116 ADOPTED**

Senator Shelley called from the President's table the Conference Committee Report on H.B. 2116. The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Shelley, the Conference Committee Report was adopted by a viva voce vote.

#### **SENATE BILL 1364 WITH HOUSE AMENDMENT**

Senator Shelley called S.B. 1364 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Amendment No. 1**

Amend S.B. 1364 as follows:

(1) After the end of SECTION 4, add the following new section:

SECTION 5. Chapter 143, Local Government Code, is amended by adding Subchapter H to read as follows:

#### **SUBCHAPTER H. LOCAL CONTROL OF FIRE FIGHTER EMPLOYMENT MATTERS IN MUNICIPALITIES WITH POPULATION OF 1.5 MILLION OR MORE.**

Sec. 143.201. POPULATION. This subchapter applies only to a municipality with a population of 1.5 million or more; but does not apply to a municipality that has adopted Article 5154c-1, Texas Revised Civil Statutes.

Sec. 143.202. DEFINITIONS. In this subchapter:

(1) "Fire fighters association" means an organization in which fire fighters participate and which exists for the purpose, in whole or part, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees.

(2) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a municipality which is required to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of public employees. The term may include, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, personnel board, or one or more other officials, regardless of the name by which they are designated.

Sec. 143.203. GENERAL PROVISIONS RELATING TO AGREEMENTS, RECOGNITION, AND STRIKES. (a) A municipality may not be denied local control over the wages, salaries, rates of pay, hours of work, and other terms and conditions of employment, or other state-mandated personnel issues, if the public employer and the fire fighters association recognized as the sole and exclusive bargaining agent for all officers covered by this subchapter come to a mutual agreement on any of the terms listed above. If no agreement is reached, the existing state laws, local ordinances and civil service rules remain unaffected. All agreements shall be reduced to writing. Nothing in this subchapter shall require either party to meet and confer on any issue or reach an agreement.

(b) A public employer may only meet and confer if the fire fighters association recognized under this subchapter as the sole and exclusive bargaining agent does not advocate the illegal right to strike by public employees.

(c) Fire fighters of a municipality may not engage in strikes or organized work stoppages against this state or a political subdivision of this state. A fire fighter who participates in a strike forfeits all civil service rights, reemployment rights, and any other rights, benefits, or privileges the fire fighter enjoys as a result of employment or prior employment, except that the right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage.

Sec. 143.204. RECOGNITION OF FIRE FIGHTER ASSOCIATION.

(a) A fire fighters association submitting a petition signed by a majority of the paid fire fighters in the municipality, excluding the head of the department and assistant department heads in the rank or classification immediately below that of the department head, may be recognized by the public employers as the sole and exclusive bargaining agent for all of the covered fire fighters unless and until recognition of the association is withdrawn by a majority of those fire fighters.

(b) In the event of a question about whether a fire fighters association represents a majority of the covered fire fighters, the question shall be resolved by a fair election conducted according to procedures agreeable to the parties. If the parties are unable to agree on such procedures, either party may request the American Arbitration Association to conduct the election and to certify the results. Certification of the results of an election resolves the question concerning representation. The fire fighters association is liable for the expenses of the election, except that if two or more associations seeking recognition as the bargaining agent submit petitions signed by a majority of the covered fire fighters, the associations shall share equally the costs of the election.

Sec. 143.205. OPEN RECORDS REQUIRED. All documents relating to an agreement between a fire fighters association and a public employer shall be available to the public pursuant to state statutes.

Sec. 143.206. ENFORCEABILITY OF AGREEMENT. A written agreement made under this subchapter between a public employer and a fire fighters association recognized as the sole and exclusive bargaining agent is enforceable and binding upon the public employer, the fire fighters

association recognized as the sole and exclusive bargaining agent, and fire fighters covered by the agreement if the municipality's governing body ratified the agreement by a majority vote and the fire fighters association ratified the agreement by a majority vote of its members by secret ballot. The state district court of the judicial district in which the municipality is located has full authority and jurisdiction on the application of either party aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by any written agreement ratified by both the public employer and the fire fighters association. The court may issue proper restraining orders, temporary and permanent injunctions, and any other writ, order, or process, including contempt orders, that are appropriate to enforcing any written agreement ratified by both the public employer and the fire fighters association.

Sec. 143.207. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) A written agreement under this subchapter between a public employer and the fire fighters association recognized as the sole and exclusive bargaining agent supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment to the extent of any conflict with the previous statute.

(b) A written agreement under this subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or a political subdivision or agent of the state, such as a personnel board, a civil service commission, or a home-rule municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under this chapter or other law unless approved by a majority vote by secret ballot of the members of the fire fighters association recognized as the sole and exclusive bargaining agent.

Sec. 143.208. REPEAL OF AGREEMENT BY ELECTORATE. Within 45 days after an agreement is ratified and signed by both the municipality and the fire fighters association recognized as the sole and exclusive bargaining agent, a petition signed by a number of registered voters equal to 10 percent of the votes cast at the most recent mayoral general election may be presented to the city secretary calling an election for the repeal of the agreement. Thereupon, the governing body shall reconsider the agreement and, if it does not repeal the agreement, shall call an election of the qualified voters to determine if they desire to repeal the agreement. The election shall be called for the next municipal election or a special election called by the governing body for that purpose. If at the election a majority of the votes are cast in favor of the repeal of the adoption of the agreement, then the agreement shall become null and void. The ballot shall be printed to provide for voting FOR or AGAINST the proposition:

"Repeal of the adoption of the agreement ratified by the municipality and the fire fighters association concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment."

Sec. 143.209. PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES. (a) For the purpose of any disciplinary appeal to either the civil service commission or a hearing examiner, all members of the bargaining unit shall



have the right to choose to be represented by any person of their choice or fire fighters association.

(b) No agreement shall interfere in the right of members of the fire fighters association to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Commission on Human Rights or the Equal Employment Opportunity Commission or to pursue affirmative action litigation.

(2) Renumber SECTIONS 5-7 accordingly.

The amendment was read.

On motion of Senator Shelley and by unanimous consent, the Senate concurred in the House amendment to S.B. 1364 by a viva voce vote.

#### CONFERENCE COMMITTEE ON HOUSE BILL 2714

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 2714 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on H.B. 2714 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; Ellis, Shelley, Brown, and Henderson.

#### SENATE BILL 404 WITH HOUSE AMENDMENTS

Senator Truan called S.B. 404 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Amendment

Amend S.B. 404 by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED

#### AN ACT

relating to the right of certain municipal and county employees to purchase a continuation of health benefits coverage at retirement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Local Government Code, is amended by adding Chapter 174 to read as follows:

#### CHAPTER 174. RIGHT OF CERTAIN MUNICIPAL AND COUNTY EMPLOYEES TO PURCHASE CONTINUED HEALTH COVERAGE AT RETIREMENT

Sec. 174.001. APPLICABILITY. This chapter applies to a person who:

(a) retires from county employment in a county with a population of 75,000 or more or municipal employment in a municipality with a population of 25,000 or more; and

(b) is entitled to receive retirement benefits from a county or municipal retirement plan.

Sec. 174.002. RIGHT TO PURCHASE CONTINUED COVERAGE.

(a) A person to whom this chapter applies is entitled to purchase continued health benefits coverage for the person and the person's dependents as provided by this chapter unless the person is eligible for group health benefits coverage through another employer. The coverage shall be provided under the group health insurance plan or group health coverage plan provided by or through the employing county or municipality to its employees.

(b) To receive continued coverage under this chapter, the person must inform the employing county or municipality, not later than the day on which the person retires from the county or municipality, that the person elects to continue coverage.

(c) If the person elects to continue coverage for the person and on any subsequent date elects to discontinue such coverage, the person is no longer eligible for coverage under this chapter.

(d) If the person elects to continue coverage for any dependent and on any subsequent date elects to discontinue such coverage, the dependent is no longer eligible for coverage under this chapter.

Sec. 174.003. LEVEL OF COVERAGE. (a) The person may elect to cover the same persons who were covered under the county's or municipality's group health insurance plan or group health coverage plan through the person at the time the person left county or municipal employment, or the person may elect to discontinue coverage for one or more persons. A person who was not covered under the plan at the time the person to whom this chapter applies left county or municipal employment is not eligible for coverage under this chapter.

(b) Except as provided by Subsections (c) and (d), the level of coverage provided under this chapter at any given time is the same level of coverage provided to current employees of the county or municipality at that time.

(c) A county or municipality may substitute Medicare supplement health benefits coverage as the coverage provided for a person who receives health benefits coverage under this chapter, including a dependent, after the date that the person becomes eligible for federal Medicare benefits.

(d) The person may elect to continue coverage at a reduced level, if offered by the county or municipality.

Sec. 174.004. PAYMENT FOR COVERAGE. A person who is entitled to continued coverage under this chapter is entitled to make payments for the coverage at the same time and to the same entity that payments for the coverage are made by current employees of the county or municipality.

Sec. 174.005. DUTY TO INFORM RETIREE OF RIGHTS. A county and a municipality shall provide written notice to a person to whom this chapter may apply of the person's rights under this chapter not later than

the date the person retires from the county or municipality. A county or municipality may fulfill its requirements under this section by placing the written notice required by this section in a personnel manual or employee handbook that is available to all employees.

Sec. 174.006. CERTAIN MATTERS NOT AFFECTED. This chapter does not:

(1) prohibit a county or municipality from uniformly changing the group health insurance plan or group health coverage plan provided for its employees and retirees;

(2) affect the definition of a dependent or the eligibility requirements for a dependent under a plan;

(3) prohibit a county or municipality from agreeing with a person to deduct the cost of coverage provided under this chapter from a pension check;

(4) prohibit a county or municipality from agreeing with a person to pay for the coverage provided under this chapter provided the person reimburses the county or municipality for the actual cost of the coverage;

(5) prohibit a county, municipality, or a pool established under Chapter 172 from increasing the cost of group health coverage to its employees and to persons covered under this chapter to reflect the increased cost, if any, attributable to compliance with this chapter;

(6) affect the right of a county or municipality to provide coverage under Chapter 172; or

(7) affect the right of a county, municipality, or a pool established under Chapter 172 to offer the coverage at the same rate that is available to active employees or to offer the coverage at a reasonable or actual rate established for retirees that may be greater than the rate offered to active employees.

Sec. 174.007. EXEMPTIONS. (a) A county or municipality that does not provide health benefits coverage through a self-insured plan or a plan authorized under Chapter 172 is not required to provide coverage under this chapter if the county or municipality makes a good faith effort to purchase insurance coverage that includes coverage required by this chapter from an insurance company authorized to do business in this state and from pools established under Chapter 172 but is unable to find a provider for the coverage.

(b) A county or municipality that on the effective date of this Act is providing coverage substantially similar to the coverage required by this chapter is exempt from this chapter.

SECTION 2. (a) Chapter 174, Local Government Code, as added by this Act, applies according to its terms to all eligible persons who leave county or municipal employment on or after January 1, 1994.

(b) A county or municipality that is required by Chapter 174, Local Government Code, as added by this Act, to provide continued health benefits coverage but that is not allowed to provide the coverage under the terms of the county's or municipality's existing group health plan shall ensure that the required continued health benefits coverage is provided for in any new plan that is adopted by the county or municipality on or after

January 1, 1994, unless the county or municipality is exempted under Section 174.007, Local Government Code, as added by this Act.

SECTION 3. The Texas Municipal Retirement System established by Subtitle G, Government Code, shall conduct a study of the feasibility of creating a statewide municipal retiree health benefits risk pool and shall submit its findings to the Legislature not later than September 30, 1994. In conducting the study, the Texas Municipal Retirement System shall consult with the Texas Municipal League and municipal employee associations and other groups or individuals as appropriate.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### **Amendment No. 1 on Third Reading**

Amend C.S.S.B. 404 by deleting SECTION 3 and substituting the following:

"SECTION 3. The Texas Municipal Retirement System established by Subtitle G, Government Code, the Texas Municipal League, and municipal employee associations may conduct a study of the feasibility of creating a statewide municipal retiree health benefits risk pool and submit their findings to the Legislature not later than September 30, 1994."

#### **Floor Amendment No. 2 on Third Reading**

Amend C.S.S.B. 404 on third reading, Section 1, page 4, line 25, by striking the words "on the effective date of this Act"

Amend C.S.S.B. 404 on third reading, Section 1, page 4, line 26, by inserting "or better than" after the words "similar to"

The amendments were read.

On motion of Senator Truan and by unanimous consent, the Senate concurred in the House amendments to S.B. 404 by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 89 ADOPTED**

Senator Truan called from the President's table the Conference Committee Report on S.B. 89. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1993.

On motion of Senator Truan, the Conference Committee Report was adopted by a viva voce vote.

#### **SENATE BILL 1332 WITH HOUSE AMENDMENTS**

Senator Truan called S.B. 1332 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment No. 1**

Amend S.B. 1332 as follows:

On page 1, line 20, after the word "Governor" add "and the Office of the Governor"

On page 5, line 3, after the words "individual agency plans." add the following:

The compiled long range plan shall serve as the strategic plan for the chief executive officer of the state.

**Committee Amendment No. 1**

Amend S.B. 1332 as follows:

(1) On page 1, line 9, insert the following after "Act" and before the period: "or is a state agency".

(2) On page 2, line 6, strike Section (1)(E) and renumber the subsequent section appropriately.

(3) On page 2, line 12, strike Section (2) and substitute the following: "(2) 'Capital improvement' means any building or infrastructure project that will be owned by the state and built with direct appropriations or with the proceeds of state-issued bonds or paid from revenue sources other than general revenue."

(4) On page 5, line 12, add the following: "(6) The final compiled report shall be submitted to the Governor, the Lieutenant Governor, the Comptroller, and each member of the Legislature not later than the 7th working day of each regular session of the Legislature."

The amendments were read.

On motion of Senator Truan and by unanimous consent, the Senate concurred in the House amendments to S.B. 1332 by a viva voce vote.

**SENATE RESOLUTION 1119**

Senator Shelley offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the House and Senate versions of H.B. 1185, relating to purchasing by local governments, to successfully conclude the committee's deliberations by authorizing the conferees to consider and take action on the following specific matter:

Senate Rule 12.03(1) is suspended to permit the committee to insert a new SECTION 17 to read as follows:

SECTION 17. Subsection (a), Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. (a) It is unlawful for this State or for any of its political subdivisions, including any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the

engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a registered professional engineer. However nothing in this Act shall be held to apply to any public work involving structural, electrical, or mechanical engineering wherein the contemplated expenditure for the completed project does not exceed Eight Thousand (\$8,000.00) Dollars. Nothing in this Act shall be held to apply to other public work wherein the contemplated expenditure for the completed project does not exceed Twenty Thousand (\$20,000.00) Dollars.

This action is necessary to clarify that a city need not engage the services of a registered professional engineer for a project that costs less than \$20,000 and does not involve structural, mechanical, or electrical engineering.

The resolution was read and was adopted by a viva voce vote.

#### SENATE RESOLUTION 1146

Senator Patterson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 73rd Legislature, Regular Session, 1993, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on H.B. 1776 to consider and take action on the following specific matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit Article 4413(29ee), Revised Statutes.

This change is necessary to delete the provisions that establish requirements for the issuance of a license to carry a concealed or an exposed handgun, procedures relating to the revocation, suspension, or renewal of the license, fees relating to the license, and offenses relating to carrying handguns, and other provisions relating to the license.

(2) Senate Rule 12.03(2) is suspended to permit the committee to omit the amendment to Section 37.01(1), Penal Code.

This change is necessary to delete the inclusion of a license to carry a concealed or exposed handgun from the definition of "governmental record" for purposes of the offense of tampering with a governmental record.

(3) Senate Rule 12.03(2) is suspended to permit the committee to omit the amendments to Section 46.03, Penal Code.

This change is necessary to delete carrying a concealed or exposed handgun and a license to carry a concealed or exposed handgun from the list of exceptions to the application of Section 46.02, Penal Code, which establishes the offense of carrying a handgun.

(4) Senate Rule 12.03(2) is suspended to permit the committee to omit the amendments to Section 51.14, Family Code.

This change is necessary to delete the requirement that a juvenile court issue to the Department of Public Safety records held by the court relating to an applicant for a license to carry a concealed or exposed handgun.

(5) Senate Rule 12.03(2) is suspended to permit the committee to omit the amendments to Section 51.16, Family Code.

This change is necessary to delete the requirement that a juvenile court issue to the Department of Public Safety sealed records held by the court relating to an applicant for a license to carry a concealed or exposed handgun.

(6) Senate Rule 12.03(1) is suspended to permit the committee to strike Section 6 of the bill, which provides for a binding referendum, and substitute the following:

**SECTION 1. REFERENDUM ON LICENSES TO CARRY HANDGUNS.** At a general election to be held on November 2, 1993, the voters shall be permitted to vote in a referendum to express their opinion on whether the Department of Public Safety should adopt rules for the issuance of licenses to carry handguns.

**SECTION 2. BALLOT PROPOSITION.** The ballot shall be printed to provide for voting for or against the proposition: "Authorizing the Department of Public Safety to adopt rules for licensing and training qualified citizens to carry handguns for self-protection."

**SECTION 3. FORM OF BALLOT.** The proposition shall be printed on the ballot beneath any proposed constitutional amendments under the heading: "Referendum Proposition." Beneath the heading shall be printed the following: "This referendum is an expression of public opinion only and has no binding effect as law."

**SECTION 4. ELECTION PROCEDURE.** (a) Notice of the election shall be given by inclusion of the proposition in the proclamation by the governor ordering the election on the proposed amendments to the state constitution, if any, and in the notice of that election given by each county judge. If proposed amendments to the state constitution are not to be voted on in conjunction with the referendum, notice of the election shall be given and the election shall be held in the manner applicable to a constitutional amendment election.

(b) Returns of the votes cast on the proposition shall be made and canvassed in the same manner as the returns on proposed constitutional amendments.

(c) Immediately after the results of the election are certified by the governor, the secretary of state shall transmit a copy of the certification to the lieutenant governor and the speaker of the house of representatives.

This change is necessary to provide for a nonbinding referendum on the question of whether the Department of Public Safety should adopt rules for the issuance of licenses to carry handguns.

The resolution was read and was adopted by the following vote: Yeas 18, Nays 12.

Yeas: Armbrister, Bivins, Brown, Harris of Tarrant, Harris of Dallas, Lucio, Madla, Montford, Nelson, Patterson, Ratliff, Shapiro, Shelley, Sibley, Sims, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Carriker, Ellis, Haley, Henderson, Leedom, Luna, Moncrief, Rosson, Truan, Turner, West.

Absent: Parker.

## SENATE RESOLUTION 1145

Senator Harris of Tarrant offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of H.B. 1630, relating to the rights, privileges, duties, and powers of conservators, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to change Subsection (b), Section 14.02, Family Code, to read as follows:

(b) Unless by written findings the court determines it would not be in the best interest of the child [Except as provided in Subsection (d) of this section], a parent appointed as a [sole managing] conservator of the child retains [aH] the following rights, privileges, duties, and powers of a parent [to the exclusion of the other parent], subject to [the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to] any limitation imposed by court order in allowing access to the child;

(1) a parent appointed as a conservator of a child has during the period that the parent has possession of the child:

(A) the right to physical possession and to direct the moral and religious training of the child;

(B) the duty of care, control, protection, and reasonable discipline of the child;

(C) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care not involving an invasive procedure; and

(D) the power to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child;

(2) each parent appointed as a conservator of a child has at all times:

(A) the right of access to medical, dental, psychological, and educational records of the child;

(B) the right to consult with any physician, dentist, or psychologist of the child;

(C) the right to consult with school officials concerning the child's welfare and educational status, including school activities;

(D) the right to attend school activities;

(E) the right to be designated on any records as a person to be notified in case of an emergency; and

(F) the right to manage the estate of the child to the extent the estate has been created by the parent or the parent's family; and

(3) a parent appointed as the sole managing conservator of a child exclusively has:



(A) the right to the services and earnings of the child;

(B) the power to consent to marriage, to enlistment in the armed forces of the United States, to medical, dental, and surgical treatment involving invasive procedures, and to psychiatric and psychological treatment;

(C) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child, including the right to establish the child's legal domicile and the primary residence of the child, except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, a power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and

(D) the power to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child.

Explanation: These changes are necessary to protect the best interest of the child relating to psychological and psychiatric treatment and to permit a parent who is a sole managing conservator of a child to establish the child's primary residence.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change Subsection (a), Section 14.04, Family Code, to read as follows:

(a) A possessory conservator has the following rights, privileges, duties, and powers during the period of possession, subject to Section 14.02(b) of this code and any limitations expressed in the decree:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to provide the child with clothing, food, and shelter; and

(3) the power to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child.

Explanation: These changes are necessary to protect the best interest of the child regarding psychological treatment of the child.

(3) Senate Rule 12.03(3) is suspended to permit the committee to add changes to Section 14.053, Family Code, to read as follows:

SECTION 8. Section 14.053, Family Code, is amended by amending Subsections (b) and (d) and adding Subsection (l) to read as follows:

(b) Net Resources Defined. "Net resources," for the purpose of determining child support liability, are 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses), interest, dividends, royalty income, self-employment income (as described in Subsection (c) of this section), net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation), and all other income actually being received, including but not limited to severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits, unemployment benefits, disability and workers' compensation benefits, interest income from notes

but not including return of principal or capital, ~~and/or~~ accounts receivable regardless of the source, gifts and prizes, spousal maintenance, and alimony, less (subtracting) 100 percent of social security taxes, federal income tax withholding for a single person claiming one personal exemption and the standard deduction, union dues, and expenses for health insurance coverage for the obligor's child. Benefits paid pursuant to aid for families with dependent children and any other child support received from any source shall be disregarded in calculating net resources.

(d) Health Insurance. The guidelines for a court order for the support of a child in this chapter assume that the court will order the obligor to provide health insurance coverage for the child subject of the suit in addition to the amount of child support calculated pursuant to these guidelines. If the court finds and sets forth in the order setting child support that the obligee will maintain health insurance coverage at the obligee's expense for the child, the court may increase the amount of child support to be paid by the obligor in an amount not exceeding the total expense to the obligee for maintaining health insurance coverage. As additional child support the court shall allocate between the parties according to the parties' circumstances the reasonable and necessary health care expenses of a child that are not reimbursed by health insurance.

(l) Retroactive Support. The guidelines for the support of a child in this chapter are intended to guide the court in determining the amount of retroactive child support that may be ordered under this chapter or Chapter 13 of this code. In ordering retroactive child support, the court shall consider the net resources of the obligor during the relevant time period.

Explanation: The change is needed to clarify how a court shall determine who is responsible for the payment of health care expenses not reimbursed by insurance and to provide that the child support guidelines apply to retroactive child support.

(4) Senate Rule 12.03(3) is suspended to permit the committee to add changes to Section 14.055, Family Code, to read as follows:

SECTION 9. Sections 14.055(a), (b), and (c), Family Code, are amended to read as follows:

(a) Rebuttable Presumption. The guidelines for the support of a child in this chapter are specifically designed to apply to situations in which the obligor's monthly net resources are \$6,000 ~~[\$4,000]~~ or less. In any suit affecting the parent-child relationship, there is a rebuttable presumption that an order containing the amount of periodic child support payments established by the schedule provided in this section is reasonable and that the order is in the best interest of the child. A court may determine that the application of the guidelines would be unjust or inappropriate under the circumstances.

(b) Schedule: \$6,000 ~~[\$4,000]~~ or Less Monthly Net Resources. In rendering an order of child support under circumstances in which the obligor's monthly net resources are \$6,000 ~~[\$4,000]~~ or less, the court shall presumptively apply the following schedule:

CHILD SUPPORT GUIDELINES

BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

- |            |                                |
|------------|--------------------------------|
| 1 child    | 20% of Obligor's Net Resources |
| 2 children | 25% of Obligor's Net Resources |

3 children	30% of Obligor's Net Resources
4 children	35% of Obligor's Net Resources
5[+] children	<del>40% of Obligor's Net Resources</del> <del>[Not less than the amount for 4 children]</del>
6+ children	<u>Not less than the amount for 5 children</u>

(c) More Than \$6,000 ~~[\$4,000]~~ Monthly Net Resources. In situations in which the obligor's net resources exceed \$6,000 ~~[\$4,000]~~ per month, the court shall presumptively apply the percentage guidelines in Subsection (b) of this section to the first \$6,000 ~~[\$4,000]~~ of the obligor's net resources. Without further reference to the percentage recommended by these guidelines, the court may order additional amounts of child support as appropriate ~~[proven;]~~ depending on the income of the parties and the proven needs of the child ~~[at the time of the order]~~. The proper calculation of a child support order that exceeds the presumptive amount established for the first \$6,000 of the obligor's net resources requires that the entire amount of the presumptive award be subtracted from the proven total needs of the child. After the presumptive award is subtracted, the court shall allocate between the parties the responsibility to meet the additional needs of the child according to the circumstances of the parties. However, in no event may the obligor be required to pay more than an amount equal to 100 percent of the proven needs of the child as child support.

Explanation: The change is needed to clarify the manner in which the amount of the child support obligation of an obligor with monthly net resources of over \$6,000 and to address the Texas Supreme Court's decision in Rodriguez v. Rodriguez, 1993 WL 165364 (Tex).

The resolution was read and was adopted by a viva voce vote.

**SENATE RULE 11.19 SUSPENDED**  
(Posting Rule)

On motion of Senator Harris of Dallas and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on State Affairs might consider the following bills today:

H.B. 187  
H.B. 1926  
H.B. 2794

**SENATE RULE 11.11 SUSPENDED**  
(Posting Rule)

On motion of Senator Truan and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might meet today.

**SENATE RULE 11.11 SUSPENDED**  
(Posting Rule)

On motion of Senator Ratliff and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Education might meet today.

**SENATE RULE 11.19 SUSPENDED  
(Posting Rule)**

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Jurisprudence might consider **H.B. 1268** today.

**RECESS**

On motion of Senator Harris of Dallas, the Senate at 12:23 p.m. took recess until 2:30 p.m. today.

**AFTER RECESS**

The Senate met at 2:30 p.m. and was called to order by Senator Haley.

**BILLS SIGNED**

The Presiding Officer announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

<b>S.B. 162</b>	<b>S.B. 1355</b>
<b>S.B. 342</b>	<b>S.B. 1363</b>
<b>S.B. 452</b>	<b>S.B. 1372</b>
<b>S.B. 475</b>	<b>S.B. 1380</b>
<b>S.B. 674</b>	<b>S.B. 1472</b>
<b>S.B. 705</b>	<b>S.B. 1118</b>
<b>S.B. 812</b>	<b>S.B. 1273</b>
<b>S.B. 818</b>	<b>S.B. 1311</b>
<b>S.B. 832</b>	<b>S.B. 1326</b>
<b>S.B. 867</b>	<b>S.B. 1329</b>
<b>S.B. 906</b>	

**MESSAGE FROM THE HOUSE**

House Chamber  
May 28, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**S.C.R. 50**, Directing the criminal justice and human service agencies of this state to adopt a memorandum of understanding defining the agencies' respective responsibilities for correctional support and treatment of sex-offenders.

**S.C.R. 79**, Requesting the speaker of the house of representatives to appoint five members of the house of representatives and the lieutenant governor to appoint five members of the senate to form a delegation to travel to Washington, D.C., to meet with the members of the Texas delegation to Congress to express opposition to the proposed Clinton energy policy and urge them to reconsider support of this plan.

**S.C.R. 93**, Commending Charles Lowry for his many years of hard work on behalf of Texas Association of School Boards.

**S.C.R. 96**, Extending sincere congratulations to Mr. and Mrs. Jonathan Lancaster on their 50th wedding anniversary.

**S.C.R. 100**, Recognizing the 100th birthday of Governor Dan Moody and declaring June 6, 1993, as Governor Dan Moody Day.

**H.C.R. 128**, Directing all state agencies that are involved in the provision of health and human services to people with disabilities to develop and implement policies to improve access to state services by persons with disabilities and to monitor compliance with these policies by their contracted service providers.

**H.C.R. 130**, Urging the president and United States Congress to thoroughly investigate the national farm credit system, and to consider enactment or implementation of a moratorium on farm foreclosure actions.

**H.C.R. 135**, Granting Green International permission to sue the State of Texas and the Texas Department of Criminal Justice.

**H.C.R. 138**, Directing the Texas Department of Transportation to issue "U.S. Judge" plates to magistrates of the United States district courts.

**H.C.R. 145**, Requesting the Congress of the United States to enact the appropriate changes in the Internal Revenue Code to allow employers to set up tax-free medical savings accounts to control medical care spending.

**H.C.R. 150**, Expressing support for the development and domicile in the State of Texas of a Texas International Stock Exchange.

**H.C.R. 156**, Paying tribute to the life of Frank L. Wright.

**H.C.R. 158**, Requesting the State Preservation Board to place on the grounds of the Capitol of the State of Texas a memorial to honor Texas pioneer women.

**H.C.R. 160**, Establishing the Governor's Awards for Excellence in the Arts, Humanities, and Sciences.

**H.C.R. 170**, Instructing the House Enrolling Clerk to make a correction to **H.B. 2281**.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 456**. The House conferees are: Representatives Hochberg, Chair; Greenberg, Place, Coleman, and McCall.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1051**. The House conferees are: Representatives Saunders, Chair; Eckels, Hightower, Chisum, and Talton.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1043**. The House conferees are: Representatives Saunders, Chair; Kuempel, Earley, Jackson, and Gray.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 959**. The House conferees are: Representatives Junell, Chair; Wilson, Delisi, Hunter of Nueces, and Coleman.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 473**. The House conferees are: Representatives Dutton, Chair; Oakley, Bailey, Carter, and Yost.

The House has adopted the Conference Committee Report on **H.B. 1166** by a non-record vote.

**H.C.R. 171**, Directing the House Enrolling Clerk to make a correction to **H.B. 74**.

The House refused to concur in Senate amendments to **H.B. 2055** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Martin, Chair; McCall, Counts, Rudd, and Gray.

The House refused to concur in Senate amendments to **H.B. 2043** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Saunders, Chair; Kuempel, Talton, Earley, and Chisum.

The House refused to concur in Senate amendments to **H.B. 2223** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Junell, Chair; Bomer, Jackson, Oliveira, and Saunders.

The House refused to concur in Senate amendments to **H.B. 31** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Cuellar of Hidalgo, Chair; Romo, Solis, Eckels, and Erickson.

The House refused to concur in Senate amendments to **H.B. 2663** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Eckels, Chair; Coleman, Campbell, Hamric, and Longoria.

The House refused to concur in Senate amendments to **H.B. 1968** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Saunders, Chair; Kuempel, Earley, Ramsay, and West.

The House refused to concur in Senate amendments to **H.B. 1719** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Junell, Chair; McDonald, Denton, Swinford, and Telford.

The House refused to concur in Senate amendments to **H.B. 711** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Brimer, Chair; Blackwood, Hunter of Nueces, Crabb, and Averitt.

The House has concurred in Senate amendments to **H.B. 301** by vote of 136 Ayes, 1 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2815** by vote of 142 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2817** by vote of 136 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2500** by vote of 131 Ayes, 0 Noes, 2 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 702** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 798** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1132** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 724** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 97** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 75** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 825** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1149** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1433** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1970** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2394** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2641** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2766** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 74** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 203** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1138** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2079** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2623** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2716** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1872** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1884** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 333** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2016** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1444** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2605** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1696** by a non-record vote.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 13 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **S.B. 13**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1993.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

#### **SENATE BILL 112 WITH HOUSE AMENDMENTS**

Senator Brown called **S.B. 112** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### **Committee Amendment No. 1**

Amend **S.B. 112**, Section 1 by deleting the following:

"Article 2, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (Article 6674v-3, Vernon's Texas Civil Statutes), is amended by adding Section 18 to read as follows:



Sec. 18. REGULATION ON STATE HIGHWAY 288."

And insert the following:

"Chapter 741, Acts of the 67th Legislature, Regular Session, 1981, Article 4477-9a, Vernon's Texas Civil Statutes (The Litter Abatement Act) is amended by adding Section 4.13 to read as follows:

Sec. 4.13. REGULATION ON STATE HIGHWAY 288."**Committee Amendment No. 2**

Amend S.B. 112, Section 1 by adding Subsection (f) to read as follows:

(f) Nothing in this section shall be construed to limit any authority granted to the Texas Department of Transportation under this Act.

The amendments were read.

On motion of Senator Brown and by unanimous consent, the Senate concurred in the House amendments to S.B. 112 by a viva voce vote.

**SENATE BILL 109 WITH HOUSE AMENDMENT**

Senator Brown called S.B. 109 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment No. 1 on Third Reading**

Amend S.B. 109 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 9, Article 42.12, Code of Criminal Procedure, is amended by amending Subsection (g) and adding Subsection (k) to read as follows:

(g) Unless requested by the defendant, a judge is not required to direct an officer to prepare a presentence report in a felony case under this section if:

(1) punishment is to be assessed by a jury;

(2) the defendant is convicted of or enters a plea of guilty or nolo contendere to capital murder;

(3) the only available punishment is imprisonment; or

(4) the judge is informed that a plea bargain agreement exists, under which the defendant agrees to a punishment of imprisonment, and the judge intends to follow the agreement [The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed].

(k) If a presentence report in a felony case is not required under this section, the judge shall direct the officer to prepare a postsentence report containing the same information that would have been required for the presentence report, other than a proposed client supervision plan and any information that is reflected in the judgement. The officer shall send the postsentence report to the clerk of the court not later than the 30th day after the date on which sentence is pronounced or deferred adjudication is granted, and the clerk shall file the postsentence report with the papers in the case.

SECTION 2. (a) The change in law made by this Act applies only to a defendant charged with an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) A defendant who commits an offense before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brown and by unanimous consent, the Senate concurred in the House amendment to S.B. 109 by a viva voce vote.

#### **SENATE BILL 820 WITH HOUSE AMENDMENTS**

Senator Turner called S.B. 820 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### **Amendment No. 1**

Amend S.B. 820 as follows:

On page 1, line 11, strike "in the appellate court".

On page 1, line 13, after the word "judge" strike "or a judge of the appellate court certifies to the clerk on application filed by the person seeking the transcript that" and substitute the word "finds".

On page 1, line 17, strike "the transcript of".

#### **Amendment No. 1 on Third Reading**

Amend S.B. 820 on third reading, in Section 1 of the bill, in the added Section 13.003, Civil Practice and Remedies Code, by striking Subsection (c).

The amendments were read.

On motion of Senator Turner and by unanimous consent, the Senate concurred in the House amendments to S.B. 820 by a viva voce vote.

#### **SENATE RULE 7.12(a) SUSPENDED (Printing Rule)**

On motion of Senator Ratliff and by unanimous consent, Senate Rule 7.12(a), as it relates to the printing of bills, was suspended for the following bills:

H.B. 982	H.B. 1651
H.B. 1261	H.B. 1831
H.B. 1372	H.B. 326

### SENATE BILL 29 WITH HOUSE AMENDMENTS

Senator Moncrief called S.B. 29 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Amendment No. 1

Amend S.B. 29 by adding the following section and renumbering remaining sections accordingly.

"(c) Section 242.044, Health and Safety Code, is amended by amending Subsections (a) and (b), to read as follows:

(a) Each licensing period [year], the department shall conduct at least two unannounced inspections of each institution.

(b) For at least two unannounced inspections each licensing period [year] of an institution other than one that provides maternity care, the department shall invite at least one person as a citizen advocate from:

- (1) the American Association of Retired Persons;
- (2) the Texas Senior Citizens Association;
- (3) the Texas Retired Federal Employees;
- (4) the Texas Department on Aging Certified Long Term Care Ombudsman, or
- (5) another statewide organization for the elderly."

#### Amendment No. 2

Amend S.B. 29 by adding the following section and renumbering remaining sections accordingly.

SECTION \_\_\_\_\_. (a) Subsections (d) and (e), Section 242.033, Health and Safety Code, are amended to read as follows:

(d) A license is renewable every two years [annually] after:

- (1) an inspection, unless an inspection is not required as provided by Section 242.047;
- (2) payment of the [annual] license fee; and
- (3) department approval of the [annual] report filed every two years by the licensee.

(e) The [annual] report required for license renewal under Subsection (d)(3) must comply with rules adopted by the board that specify the date of submission of the report, the information it must contain, and its form.

(b) Section 242.034, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed \$150 [is \$50] plus \$5 [\$2] for each unit of capacity or bed space for which a license is sought. An additional license fee may be charged as provided by Section 242.097.

(b) The license fee must be paid [annually] with each application for an initial license, a renewal [of the institution's] license, or a change of ownership license.

(f) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

**Amendment No. 1 on Third Reading**

Amend S.B. 29 by deleting (i) of Section 1 and substituting the following:

"(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Subchapter E and the rules adopted under that subchapter shall continue to be subject to legal compulsion and be treated as public information under Subchapter E after the effective date of this act, even though such information, reports and other documents may be used in the collection, compilation and analysis described in Subsections (b) and (d) of this section."

The amendments were read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendments to S.B. 29 by a viva voce vote.

**SENATE RESOLUTIONS ON FIRST READING**

The following resolutions were introduced, read first time, and referred to the committees indicated:

**S.R. 1148** by Montford Administration  
Establishing a joint interim committee to study allegedly fraudulent telemarketing schemes.

**S.C.R. 101** by Patterson Administration  
Commending the officers and employees of Rollins Environmental Services (TX), Incorporated, for their contributions to ensuring the protection and safety of all Texans.

**S.C.R. 105** by Haley Administration  
Resolving that the 73rd Legislature of the State of Texas establish the Franchise Agreements Task Force.

**S.C.R. 106** by Ellis Administration  
Requesting the lieutenant governor and speaker of the house of representatives to create a joint interim committee to study how the considerable resources of public television might best be used to further enhance service to the people of Texas.

**CONFERENCE COMMITTEE ON HOUSE BILL 2711**

Senator Barrientos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 2711 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2711** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Montford, West, Ratliff, and Rosson.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 458**

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 458** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 458** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Ratliff, Lucio, Moncrief, and Luna.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1064**

Senator Ratliff called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1064** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1064** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chair; Haley, Luna, Bivins, and Shapiro.

#### **SENATE BILL 34 WITH HOUSE AMENDMENTS**

Senator Ratliff called **S.B. 34** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **S.B. 34** as follows:

On page 1, line 11, between "to" and "the," insert the following:  
"or within 100 miles of"

On page 2, line 1, between "located" and "and," insert the following: "or adjacent to such county"

**Amendment No. 2**

Amend S.B. 34 in Section 1 of the bill, in Section 54.060(a), Education Code, (page 1, lines 7 and 8) by striking "a state situated adjacent to Texas" and substituting "Arkansas, Louisiana, New Mexico, or Oklahoma [~~a state situated adjacent to Texas~~]".

**Amendment No. 3**

Amend S.B. 34 by inserting a new section, appropriately numbered, to read as follows and renumbering subsequent section appropriately:

SECTION . Section 54.060, Education Code, is amended by adding Subsection (e) to read as follows:

(e) The payment of resident tuition at a public technical institute as authorized by Subsection (a) does not affect the constitutionally dedicated funding to which institutions of higher education are entitled under Article VII, Section 17, of the Texas Constitution.

**Amendment No. 1 on Third Reading**

Amend S.B. 34 on third reading, as amended by Amendment No. 1 by Smithee and Swinford, as follows:

(1) In SECTION 1, in amended Subsection (a), Section 54.060, Education Code, strike "or within 100 miles of".

(2) In SECTION 1, in amended Subsection (a), Section 54.060, Education Code, immediately following the first sentence, insert "The nonresident tuition fee prescribed in this chapter does not apply to a nonresident student who is a resident of New Mexico or Oklahoma and who registers in a public technical institute that is situated in a county that is within 100 miles of the state in which the nonresident student resides, and who is admitted for the purpose of utilizing available instructional facilities.

The amendments were read.

Senator Ratliff moved to concur in the House amendments to S.B. 34.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**GUEST PRESENTED**

Senator Truan was recognized and introduced to the Senate Frank Rey Gonzales of Mathis, who has just completed his second year at Columbia University, where he was on the Dean's List.

The Senate welcomed Mr. Gonzales.

**SENATE BILL 1295 WITH HOUSE AMENDMENT**

Senator Ratliff called S.B. 1295 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend S.B. 1295 as follows:

(1) On page 1, line 23, after "made." strike the following new language:

"However, if a taxpayer receiving a refund under this section shows that it was necessary to borrow the protested amount of taxes paid, the taxpayer is entitled to recover the amount of actual interest paid, but no more than nine percent, calculated from the delinquency date for the taxes until the date the refund is made."

The amendment was read.

On motion of Senator Ratliff and by unanimous consent, the Senate concurred in the House amendment to S.B. 1295 by a viva voce vote.

**CONFERENCE COMMITTEE ON HOUSE BILL 31**

Senator West called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 31 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on H.B. 31 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Parker, Ellis, Rosson, and Madla.

**SENATE RESOLUTION 1147**

Senator Montford offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the House and Senate versions of S.B. 947, relating to continuing legal education, technical assistance, and other support programs for prosecuting attorneys and their personnel, for criminal defense attorneys who regularly represent indigent defendants, and for justices of the peace and their court personnel, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to amend the section of the House third reading amendment to the bill adding Section 56.006, Government Code, to read as follows:

"SECTION \_\_\_\_ Chapter 56, Government Code, is amended by adding Section 56.007 to read as follows:

"Sec. 56.007. ADMINISTRATIVE EXPENSES. An entity receiving a

grant of funds from the Court of Criminal Appeals under this chapter for continuing legal education, technical assistance, and other support programs may not use grant funds to pay any costs of the entity not related to approved grant activities."

This action is necessary to make a technical correction to and clarify the legislative intent of House 3rd Reading Amendment No. 1.

(2) Senate Rule 12.03(3) is suspended to permit the committee to add the following appropriately numbered section to the bill to read as follows:

"SECTION \_\_\_\_\_.

"1. All funds appropriated to the Supreme Court of Texas in S.B. 5, Acts of the Seventy-third Legislature, Regular Session, in line item 2., Judicial and Court Personnel Training, and on page IV-17 in rider provision 5., Appropriation, Judicial Education, are hereby transferred to the Court of Criminal Appeals for the same period and for the same purposes as indicated in that Act.

"2. All rider provisions in Article IV, S.B. 5, Seventy-third Legislature, Regular Session, limiting, controlling, or otherwise affecting the appropriations transferred pursuant to subsection 1 of this section shall continue to apply to said appropriations and a reference therein to the Supreme Court of Texas shall be deemed a reference to the Court of Criminal Appeals.

"3. Section 5., Contingency Appropriation, Judicial Education, at page IV-28 in the Special Provisions - Judiciary of S.B. 5, Acts of the Seventy-third Legislature, Regular Session, shall have no effect."

This action is necessary to incorporate a provision needed to transfer certain appropriations, which provision was intended to be added as a rider to the General Appropriations Act.

The resolution was read and was adopted by a viva voce vote.

#### CONFERENCE COMMITTEE ON HOUSE BILL 1968

Senator Shelley, on behalf of Senator Armbrister, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 1968 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on H.B. 1968 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Shelley, Henderson, Brown, and Whitmire.

#### CONFERENCE COMMITTEE ON HOUSE BILL 1432

Senator Shelley, on behalf of Senator Armbrister, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 1432 and moved that the request be granted.



The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1432** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Montford, Haley, Sibley, and Turner.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 702 ADOPTED**

Senator Leedom called from the President's table the Conference Committee Report on **S.B. 702**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1993.

On motion of Senator Leedom, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**HOUSE CONCURRENT RESOLUTION 158**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 158**, Requesting the State Preservation Board to place on the grounds of the Capitol of the State of Texas a memorial to honor Texas pioneer women.

The resolution was read.

On motion of Senator Monford and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1166 ADOPTED**

Senator Luna called from the President's table the Conference Committee Report on **H.B. 1166**. The Conference Committee Report was filed with the Senate on Tuesday, May 25, 1993.

On motion of Senator Luna, the Conference Committee Report was adopted by a viva voce vote.

**RECORD OF VOTE**

Senator West asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 724 ADOPTED**

Senator Rosson called from the President's table the Conference Committee Report on **H.B. 724**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1993.

On motion of Senator Rosson, the Conference Committee Report was adopted by a viva voce vote.

**SENATE RULE 12.09(a) SUSPENDED**

On motion of Senator Montford and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on S.B. 947.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 947 ADOPTED**

Senator Montford called from the President's table the Conference Committee Report on S.B. 947. The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Montford, the Conference Committee Report was adopted by a viva voce vote.

**SENATE BILL 679 WITH HOUSE AMENDMENTS**

Senator Luna called S.B. 679 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend S.B. 679 by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to an extended year program for certain public school students.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter O, Chapter 21, Education Code, is amended by adding Section 21.562 to read as follows:

Sec. 21.562. OPTIONAL EXTENDED YEAR PROGRAM. (a) A school district may apply to the commissioner of education for approval to provide an extended year program for a period not to exceed 45 days for students in kindergarten through grade level eight who would otherwise be retained.

(b) In order to provide the funding necessary for a program approved under this section, with the approval of the commissioner a school district may provide a number of days of instruction for students during the regular school term that is up to 5 days less than the number otherwise required under Section 16.052(a) of this code.

(c) The commissioner may adopt rules for the administration of programs provided under this section.

SECTION 2. Section 21.032(c), Education Code, is amended to read as follows:

(c) Unless specifically exempted by Section 21.033 of this code, a student enrolled in a public school district must attend an extended year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 21.103(b) of this

code. A district shall provide transportation services to each student required under this section to attend an extended year program who would be eligible for transportation services during a regular school term. A school district is not required to provide transportation services to accommodate ~~[such]~~ students required under this section to attend tutorial classes.

SECTION 3. This Act applies beginning with the 1993-94 school year.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

#### Amendment No. 1 on Third Reading

Amend C.S.S.B. 679 on third reading as follows:

(1) Insert the following new sections, appropriately numbered, to read as follows:

SECTION \_\_\_\_ Section 16.006(a), Education Code, is amended to read as follows:

(a) In this Chapter;

(1) for the 1993-1994 and 1994-1995 school years, average daily attendance is determined by the daily attendance as averaged each month of the minimum school year as described under Section 16.052(a) [of this code]; and

(2) for the 1995-1996 school year and each year thereafter, average daily attendance is the quotient of the sum of attendance for each day of the minimum school year as described under Section 16.052(a) and for each day approved by the commissioner of education for an extended year program under Section 21.562 divided by the number of days in the minimum school year.

SECTION \_\_\_\_ Subchapter O, Chapter 21, Education Code, is amended by adding Section 21.562 to read as follows:

Sec. 21.562. STATE-FUNDED OPTIONAL EXTENDED YEAR PROGRAM. (a) A school district may apply to the commissioner of education for funding and approval of an extended year program for a period not to exceed 30 days for students in kindergarten through grade level eight who are identified as likely not to be promoted to the next grade level for the succeeding school year.

(b) The commissioner may adopt rules for the administration of programs provided under this section.

(c) A school district may not enroll more than 12 students in a class provided under this section.

(d) Each class provided under this section shall be taught by a teacher who has completed successfully a program that provides training to teach a class under this section and that satisfies standards the commissioner establishes.

(e) A student who attends at least 85 percent of the program days of a program under this section shall be promoted to the next grade level at

the beginning of the next school year unless a parent of the student presents a written request to the school principal that the student not be promoted to the next grade level. As soon as practicable after receiving the request from a parent, the principal shall hold a formal meeting with the student's parent, extended year program teacher, and counselor. During the meeting, the principal, teacher, or counselor shall explain the longitudinal statistics on the academic performance of students who are not promoted to the next grade level and provide information on the effect of retention on a student's self-esteem and on the likelihood of a student dropping out of school. After the meeting, the parent may withdraw the request that the student not be promoted to the next grade level. If the parent of a student eligible for promotion under this subsection withdraws the request, the student shall be promoted. If a student is promoted under this subsection, the school district shall continue to use innovative practices to ensure that the student is successful in school in succeeding years.

(f) A school district that provides a program under this section shall adopt a policy designed to lead to immediate reduction and ultimate elimination of student retention.

(g) A school district may apply for approval under this section only for a pilot program for students in grade level one for the 1993-1994 school year and only for a pilot program for students in grade levels one and two for the 1994-1995 school year. The state's share of a pilot program under this section may not exceed the amount appropriated for program purposes. Funds provided to a pilot program may be used for transportation of eligible students. This subsection expires September 1, 1995.

(2) In Section 1 of the bill, in the introductory language, strike "21.562" and substitute "21.563".

(3) In Section 1 of the bill, in added Section 21.562, Education Code, strike "21.562" and substitute "21.563".

(4) In Section 1 of the bill, at the end of Subsection (b) of added Section 21.562, Education Code, insert the following:

A school district providing a program under this section is not entitled to funding appropriated for purposes of providing programs under Section 21.562.

The amendments were read.

On motion of Senator Luna and by unanimous consent, the Senate concurred in the House amendments to S.B. 679 by a viva voce vote.

#### SENATE BILL 57 WITH HOUSE AMENDMENTS

Senator Moncrief called S.B. 57 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 1

Amend S.B. 57 as follows:

(1) On page 6, line 16, between the words “another” and “and”, insert, “or the Texas Department of Criminal Justice”

(2) On page 8, between lines 19 and 20, insert the new Section 2 to read as follows and renumber the following sections appropriately:

“SECTION 2. Subchapter B, Chapter 501, Government Code, is amended by adding the following section to read as follows:

Sec. 501.059. The board will establish requirements for tuberculosis screening of department employees and volunteers in a manner similar to that established for jail employees and volunteers as outlined in Subchapter B, Chapter 89, Subtitle D, Title 2, Health and Safety Code.”

#### **Floor Amendment No. 2**

Amend S.B. 57 by striking Section 2 of the bill and substituting the following:

SECTION 2. (a) The Texas Department of Health shall supply the materials, drugs, and laboratory service to jails and community corrections facilities that are necessary to accomplish the screening required by this Act.

(b) The Texas Department of Health shall provide funds for administering screenings, evaluating inmates, and administering drugs to inmates suspected of having an active case of tuberculosis. The department shall reimburse a county or judicial district for all necessary expenses to provide the services required by this Act. The department shall adopt forms for the submission of such expenses for reimbursement.

#### **Amendment No. 3**

Amend S.B. 57 on page 9, line 1, by striking “shall” and substituting “may”.

On page 9, line 10, strike “shall” and substitute “may”.

#### **Floor Amendment No. 1 on Third Reading**

Amend S.B. 57 on third reading by striking Floor Amendment No. 2 as adopted on second reading and substituting the following:

SECTION 2. (a) The Texas Department of Health shall supply the materials, drugs, and laboratory services to jails and community corrections facilities that are necessary to accomplish the screening required by this Act. The department is not required to supply a private jail, but a private jail may receive reimbursement under its contract with a county.

(b) The Texas Department of Criminal Justice shall provide funds for administering screenings, evaluating inmates, and administering drugs to inmates suspected of having an active case of tuberculosis, for inmates whose paperwork and processing required under Subsection (a), Section 8, Article 42.09, Code of Criminal Procedure, has been completed, and inmates in a community corrections facility. The department shall reimburse a county or judicial district in the same manner as provided for reimbursements under Section 499.123, Government Code.

(c) A county or judicial district shall provide funds for administering screenings, evaluating inmates, and administering drugs to inmates suspected of having an active case of tuberculosis, for inmates who are

pretrial, inmates whose paperwork and processing under Subsection (a), Section 8, Article 42.09, Code of Criminal Procedure, is completed, or inmates who are not to be transferred to a Texas Department of Criminal Justice facility.

(d) It is the intent of the legislature that the county provide not more than 33 percent of the cost of the program required under this Act. The Texas Department of Health is authorized to provide grants to counties for this program.

(e) If the Department of Health and the Department of Criminal Justice fail to provide 67% of the costs of the program assistance to a county as prescribed under this act, the county is not required to continue the tuberculosis testing and screening programs mandated under Chapter 89, Subtitle D, Title 2, Health & Safety Code.

The amendments were read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendments to S.B. 57 by a viva voce vote.

#### SENATE BILL 1094 WITH HOUSE AMENDMENT

Senator Madla called S.B. 1094 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

##### Amendment No. 1

Amend S.B. 1094 by deleting SECTION 2. as follows:

Page 1, strike lines 14-21.

The amendment was read.

On motion of Senator Madla and by unanimous consent, the Senate concurred in the House amendment to S.B. 1094 by a viva voce vote.

#### SENATE BILL 834 WITH HOUSE AMENDMENT

Senator Zaffirini called S.B. 834 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

##### Amendment No. 1

Amend S.B. 834 as follows:

Add new SECTION 4 to read as follows and renumber the following sections accordingly.

SECTION 4. Section 461.012. Powers and Duties is amended to read as follows:

(16) submit to the federal government reports and strategies necessary to comply with Section 1926 of the federal Alcohol, Drug Abuse and Mental Health Administration Reorganization Act, Pub. L. 102-321; reports and strategies are to be coordinated with appropriate state government entities.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to S.B. 834.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### SENATE BILL 1130 WITH HOUSE AMENDMENT

Senator Zaffirini called S.B. 1130 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### Amendment

Amend S.B. 1130 by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the Interagency Council on Sex Offender Treatment; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1-4, Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Council" means the ~~[Interagency]~~ Council on Sex Offender Treatment.

(2) "Registry" means a database that is maintained by the council and that contains the names of persons who have met the council's criteria for the treatment of sex offenders and who provide mental health or medical services for the rehabilitation of sex offenders.

(3) "Rehabilitation service" means a mental health treatment or medical intervention program designed to treat or remedy a sex offender's mental or medical problem that may relate or contribute to the sex offender's criminal or paraphiliac problem.

(4) ~~[(3)]~~ "Sex offender" means a person who:

(A) is convicted of committing or adjudicated to have committed a sex crime under the laws of a state or under federal law;

(B) is awarded deferred adjudication for a sex crime under the laws of a state or under federal law;

(C) admits to having violated the law of a state or federal law with regard to sexual conduct ~~[admits to committing or has been convicted of an offense under any of the following sections of the Penal Code:~~

- ~~[(i) Section 20.04(a)(4) (Aggravated kidnapping);~~
- ~~[(ii) Section 21.07 (Public lewdness);~~
- ~~[(iii) Section 21.08 (Indecent exposure);~~
- ~~[(iv) Section 21.11 (Indecency with a child);~~
- ~~[(v) Section 22.011 (Sexual assault);~~

- ~~[(vi) Section 22.021 (Aggravated sexual assault);~~
- ~~[(vii) Section 25.02 (Incest);~~
- ~~[(viii) Section 25.06 (Solicitation of a child); or~~
- ~~[(ix) Section 43.25 (Sexual performance by a~~

~~child)]; or~~

(D) ~~[(B)]~~ experiences or evidences a paraphiliac disorder as defined by the Revised Diagnostic and Statistical Manual, including any subsequent revision of that manual ~~[(H)]~~.

(5) ~~[(4)]~~ "Sex offender treatment ~~[(Treatment)]~~ provider" means a person, licensed or certified to practice in this state, who provides mental health or medical services for rehabilitation of sex offenders, including a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or certified social worker.

Sec. 2. COUNCIL. The ~~[(interagency)]~~ Council on Sex Offender Treatment is established.

Sec. 3. COUNCIL MEMBERSHIP, ADVISORY COMMITTEE.  
(a) The council is composed of three public members each of whom meets the council's requirements for registration as a sex offender treatment provider. The governor shall appoint the members of the council with the advice and consent of the senate.

(b) An interagency advisory committee may advise the council on administering its duties under this Act. The interagency advisory committee is composed of 11 ~~[(4)]~~ members. The executive head of each of the following agencies or the designated representative of the executive head shall serve as a ~~[(an ex officio)]~~ member of the interagency advisory committee ~~[(council)]~~: the institutional division of the Texas Department of Criminal Justice ~~[(Corrections)]~~, pardons and paroles division of the Texas Department of Criminal Justice ~~[(Board of Pardons and Paroles)]~~, community justice assistance division of the Texas Department of Criminal Justice ~~[(Texas Adult Probation Commission)]~~, Texas Juvenile Probation Commission, Texas Department of Mental Health and Mental Retardation, Texas Youth Commission ~~[(Council)]~~, Sam Houston State University, ~~[(Texas)]~~ Department of Protective and Regulatory ~~[(Human)]~~ Services, Texas Council of Community Mental Health and Mental Retardation Centers, and Texas Department of Health. The director of the Criminal Justice Division of the Governor's Office or the designated representative of the director shall serve as a ~~[(an ex officio)]~~ member of the interagency advisory committee ~~[(council)]~~. The governor shall appoint three public members to the council with the advice and consent of the senate.

(c) ~~[(b)]~~ If the director of the Criminal Justice Division of the Governor's Office or an executive head of a state agency designates a representative as a member of the interagency advisory committee, the representative must be at the time of the designation and during the time of service on the committee ~~[(council)]~~ an officer or employee of the agency or division. ~~[(The three members appointed by the governor must be at the time of appointment and during the time of service on the council representatives of the general public with expertise in the treatment of sex offenders.)]~~



Sec. 4. TERMS. ~~Members~~ ~~[Public members]~~ of the council hold office for staggered terms of six years, with one member's term expiring February 1 of each odd-numbered year.

SECTION 2. Section 5, Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) ~~Two~~ ~~[Seven]~~ members of the council constitute a quorum.

(d) ~~The interagency advisory committee shall elect a chairman from among its members. The committee shall meet at the call of its chairman or at the request of the council. Seven members of the committee constitute a quorum.~~

SECTION 3. Sections 8, 11, 12, and 13, Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 8. DUTIES. The council shall:

(1) determine if a state-administered sex offender treatment program is necessary and identify needed services for the treatment and rehabilitation of sex offenders and report to the governor, lieutenant governor, and speaker of the house of representatives about the nature of the services and the funding necessary for the services;

(2) ~~develop treatment strategies for sex offenders by evaluating~~ ~~[evaluate]~~ in-state and out-of-state programs for sex offender treatment, ~~set standards for treatment of sex offenders that must be met by sex offender treatment providers to be eligible for inclusion in the council's registry,~~ and recommend to ~~licensing and regulatory boards and to the directors of current programs methods of improving [the] programs to meet council standards;~~

(3) collect and disseminate information to judicial officers, probation or parole workers, ~~appropriate state and municipal agencies,~~ and the general public about available sex offender treatment programs;

(4) distribute money appropriated ~~to the council~~ by the legislature for that purpose to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of sex offender treatment programs;

(5) advise and assist agencies in coordinating procedures to provide treatment services that may include community-based programs;

(6) establish and maintain a registry of ~~sex offender treatment providers~~ ~~[individuals and programs providing mental health and medical services for sex offenders]~~ in accordance with Section 13 of this Act; ~~[and]~~

(7) ~~design and conduct continuing education programs for sex offender treatment providers; and~~

(8) ~~develop and implement by rule registration requirements and procedures for treatment providers in the registry~~ ~~[apply for available funds from the federal or state government or other public or private sources to perform the council's duties].~~

Sec. 11. AGENCY COOPERATION. Each state agency or division of an agency represented on the ~~interagency advisory committee~~ ~~[council]~~ shall cooperate with the council if requested to do so by the council.

Sec. 12. GRANTS AND DONATIONS. The council may apply for and accept on behalf of the state a grant or donation from any source to be used by the council to perform its duties.

Sec. 13. REGISTRY. (a) The council shall establish and maintain a registry of sex offender treatment providers ~~[individuals who provide mental health or medical services for rehabilitation of sex offenders]~~.

(b) The council by rule shall develop procedures and eligibility requirements for inclusion in the registry, including, if appropriate, those related to clinical practice experience and assessment, continuing education, and supervision ~~[registration]~~.

~~[(c) The council may set a reasonable fee for registration to cover the costs of administering the registry.]~~

SECTION 4. Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), is amended by adding Sections 13A, 13B, and 13C to read as follows:

Sec. 13A. FEES. The council may charge and collect reasonable fees in an amount set to cover the council's administrative and reproduction costs, including:

(1) sex offender treatment provider fees;

(2) training fees;

(3) publication fees; and

(4) fees for providing continuing education and other services to treatment providers.

Sec. 13B. REGISTRATION REQUIRED: OFFENSE. (a) A person may not claim to be a sex offender treatment provider or use the title "sex offender treatment provider" unless the person is listed in the registry.

(b) A person commits an offense if the person is not listed in the registry and the person claims to be a sex offender treatment provider or uses a title that contains the words "sex offender treatment provider." An offense under this subsection is a Class C misdemeanor.

Sec. 13C. JUDICIAL REVIEW OF EXCLUSION FROM REGISTRY. A person excluded from the registry may appeal the council's decision to exclude the person from the registry by filing a petition for judicial review in the manner provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 5. Section 14, Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. APPLICATION OF SUNSET ACT ~~[ABOLITION AND EXPIRATION]~~. The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the [The] council is abolished and this Act expires September 1, 1997 [1995]. [On that date, the records and other property in the custody of the council are transferred to the State Purchasing and General Services Commission.]

SECTION 6. An individual or program that on the effective date of this Act is included in the provider registry established and maintained by the Interagency Council on Sex Offender Treatment is registered as a sex offender treatment provider under the provider registry of the Council on

Sex Offender Treatment on the effective date of this Act. The Council on Sex Offender Treatment shall review the status of a provider that is transferred to its registry under this section and may change the provider's status after evaluating the provider's compliance with council standards for inclusion in the registry. The council shall give a provider proper notice and a reasonable opportunity to meet registry standards before changing the provider's status under this section.

SECTION 7. (a) The three public members of the Interagency Council on Sex Offender Treatment who are serving on the effective date of this Act shall serve the remainder of their terms of office as members of the Council on Sex Offender Treatment. Terms of the nonpublic members of the Interagency Council on Sex Offender Treatment expire on the effective date of this Act, and on that date those members shall begin service as members of the interagency advisory committee created by this Act.

(b) A form, rule, registration requirement, or procedure adopted by the Interagency Council on Sex Offender Treatment that is in effect on the effective date of this Act remains in effect on and after that date as if adopted by the Council on Sex Offender Treatment until amended, repealed, withdrawn, or otherwise superseded by the Council on Sex Offender Treatment.

(c) The Council on Sex Offender Treatment is the successor agency to the Interagency Council on Sex Offender Treatment's appropriations, funds, property, employees, and obligations.

SECTION 8. This Act takes effect September 1, 1993.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to S.B. 1130 by a viva voce vote.

#### CONFERENCE COMMITTEE ON HOUSE BILL 578

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 578 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on H.B. 578 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Armbrister, Montford, Madla, and Brown.

**SENATE JOINT RESOLUTION 9  
WITH HOUSE AMENDMENT**

Senator Lucio called S.J.R. 9 from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer laid the resolution and the House amendment before the Senate.

**Amendment**

Amend S.J.R. 9 by substituting in lieu thereof the following:

**A JOINT RESOLUTION**

proposing a constitutional amendment authorizing the legislature to provide for the issuance of bonds for the state financing of start-up costs for historically underutilized businesses.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article XVI of the Texas Constitution is amended by adding Section 72 to read as follows:

Sec. 72. (a) The legislature by law may establish a Texas historically underutilized business capital growth and start-up fund. The money in the fund may be used without further appropriation and only for a program established by the legislature to aid in the start-up costs of a historically underutilized business, as defined by the legislature. The fund must contain a program account, an interest and sinking account, and other accounts authorized by the legislature. To carry out the program authorized by this subsection, the legislature may issue up to \$50 million of general obligation bonds to provide funding for the fund. The fund is to be composed of the proceeds of the bonds authorized by this subsection, loan guarantee fees and other amounts received from loan guarantees made under this subsection, and any other amount required to be deposited in the fund by the legislature.

(b) The legislature may require review and approval of the issuance of bonds under this section, of the use of the bond proceeds, or of the rules adopted by an agency to govern use of the bond proceeds. Notwithstanding any other provision of this constitution, any entity created or directed to conduct this review and approval may include members or appointees of members of the executive, legislative, and judicial departments of state government.

(c) Bonds authorized under this section constitute a general obligation of the state. While any of the bonds or interest on the bonds is outstanding and unpaid, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, the amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, less any amount in any interest and sinking account at the end of the preceding fiscal year that is pledged to payment of the bonds or interest.

SECTION 2. This proposed amendment shall be submitted to the voters at an election to be held November 2, 1993. The ballot shall be

printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the legislature to provide for the issuance of \$50 million of general obligation bonds for the recovery and further development of the state's economy and for increasing job opportunities and other benefits for Texas residents through state financing of the start-up costs of historically underutilized businesses."

The amendment was read.

Senator Lucio moved to concur in the House amendment to **S.J.R. 9**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON  
SENATE BILL 339 DISCHARGED**

On motion of Senator Parker and by unanimous consent, the Senate conferees on **S.B. 339** were discharged.

Question—Shall the Senate concur in the House amendment to **S.B. 339**?

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendment to **S.B. 339** by a viva voce vote.

**SENATE RESOLUTION 1126**

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to enable the senate to the extent described in this resolution to permit the conference committee appointed to adjust the differences between the house and senate versions of **H.B. 2049**, relating to the effective administration of air quality permitting programs, including compliance with federal Clean Air Act requirements, to successfully conclude the committee's deliberations by taking action on the following specific matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 8 of the bill, which pertains to modifications of existing facilities.

Explanation: This change is necessary to omit a section that was accidentally included in the bill as a result of an improper house floor amendment.

(2) Senate Rule 12.03(1) is suspended to permit the committee to amend the citation in Section 13 of the bill, amended Section 382.0542(a)(3)(H), Health and Safety Code, reading "Section 129 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)", and substituting in its place "Section 129 of the federal Clean Air Act (42 U.S.C. Section 7429)".

Explanation: This change is a necessary technical correction in the citation.

(3) Senate Rule 12.03(1) is suspended to permit the committee to amend the citation in Section 25 of the bill, amended Section

382.062(a)(1), Health and Safety Code, reading "(42 U.S.C. Sections 7641 et seq. and 7661 et seq.)", and substituting in its place "(42 U.S.C. Sections 7651 et seq. and 7661 et seq.)".

Explanation: This change is necessary to correct a typographical error.

(4) Senate Rule 12.03(1) is suspended to permit the committee to amend the citation in Section 26 of the bill, amended Section 382.0622(c), Health and Safety Code, reading "(42 U.S.C. Sections 7641 et seq. and 7661 et seq.)", and substituting in its place "(42 U.S.C. Sections 7651 et seq. and 7661 et seq.)".

Explanation: This change is necessary to correct a typographical error.

The resolution was read and was adopted by a viva voce vote.

#### SENATE BILL 367 WITH HOUSE AMENDMENT

Senator Ellis called S.B. 367 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### Committee Amendment No. 1

Amend S.B. 367, Section 481.376, Government Code, as added by Section 1, by adding Subsection (f) on page 6 between lines 3 and 4 to read as follows:

(f) There shall be no general revenue of the State of Texas used for this section. Should federal or private funds, grants, or donations become available, then such funds shall be used for this section.

The amendment was read.

Senator Ellis moved to concur in the House amendment to S.B. 367.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### CONFERENCE COMMITTEE ON HOUSE BILL 711

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on H.B. 711 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on H.B. 711 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Sims, Armbrister, Bivins, and Ratliff.

#### SENATE BILL 512 WITH HOUSE AMENDMENT

Senator Ellis called S.B. 512 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **S.B. 512** as follows:

(1) On page 2, lines 1 and 2, delete "and Section 12.03(b) of this code".

(2) On page 2, line 1, change "Subsection" to "Subsections".

(3) On page 2, line 1, following "(a)", insert "and (b)".

The amendment was read.

Senator Ellis moved to concur in the House amendment to **S.B. 512**.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Parker, Patterson, Ratliff, Rosson, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Nelson, Shapiro.

**CONFERENCE COMMITTEE ON HOUSE BILL 2333**

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2333** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2333** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Armbrister, Bivins, Turner, and Sims.

**CONFERENCE COMMITTEE ON HOUSE BILL 1704**

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1704** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1704** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Sims, Truan, Ratliff, and Barrientos.

**CONFERENCE COMMITTEE ON HOUSE BILL 1626**

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1626** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1626** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Madla, Truan, Nelson, and Turner.

**SENATE BILL 551 WITH HOUSE AMENDMENT**

Senator Sibley called **S.B. 551** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **S.B. 551** on page 2, line 21, by inserting after "ultimate" and before "assets", the word "underlying"

The amendment was read.

Senator Sibley moved to concur in the House amendment to **S.B. 551**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 315 WITH HOUSE AMENDMENT**

Senator Carriker called **S.B. 315** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment No. 1 on Third Reading**

Amend **S.B. 315**, Section 2 of the bill, in Section 46.002 (3), Government Code, by inserting "Webb" between "Terry," and "and Willacy".

The amendment was read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendment to **S.B. 315** by a viva voce vote.

**SENATE BILL 420 WITH HOUSE AMENDMENT**

Senator Carriker called **S.B. 420** from the President's table for consideration of the House amendment to the bill.



The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment No. 1**

Amend S.B. 420 by inserting on line 18, page 1, between “may” and “order” the following:  
“after notice of and hearing in the public interest”

The amendment was read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendment to S.B. 420 by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1200 ADOPTED**

Senator Whitmire called from the President’s table the Conference Committee Report on H.B. 1200. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1993.

On motion of Senator Whitmire, the Conference Committee Report was adopted by a viva voce vote.

**SENATE RESOLUTION 1140**

Senator Parker offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of S.B. 1051, relating to the reduction of solid waste by creating markets for recycled materials otherwise promoting recycling and the use of recycled materials and by municipal solid waste management, to successfully conclude the committee’s deliberations, by authorizing the conferees to consider and take action on the following specific matter:

(1) Senate Rule 12.03 is suspended to permit the committee to insert a new Section 3, Subsection 361.472(a) to read as follows:

(a) A wholesale or retail tire dealer who sells or offers to sell new tires not for resale shall collect at the time and place of sale a waste tire recycling fee [of \$2] for each new ~~[automobile, van, bus, truck, trailer, semitrailer, truck tractor and semitrailer combination, or recreational vehicle]~~ tire sold as follows:

(1) \$2 for each tire with that has a rim diameter [equal to or greater than] 12 inches but less than 17.5 [26] inches; and

(2) \$3.50 for each tire that has a rim diameter of 17.5 inches but less than 25 inches; and

(3) \$2 for a motorcycle tire, regardless of the rim diameter.

This action is necessary to compensate for the disparity between the weight of a truck tire in comparison to an automobile tire and the cost to the state for processing these tires.

The resolution was read and was adopted by a viva voce vote.

**AT EASE**

The Presiding Officer at 3:32 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

**IN LEGISLATIVE SESSION**

Senator Haley at 3:45 p.m. called the Senate to order as In Legislative Session.

**SENATE BILL 172 WITH HOUSE AMENDMENTS**

Senator Sims called **S.B. 172** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend **S.B. 172** on page 1, line 14, by striking "**60**" and adding "**50**".

**Amendment No. 2**

Amend **S.B. 172** by adding a new Subsection (f) in Section 1 as follows:

"(f) Nothing herein shall limit or otherwise affect the rights of parties engaged in litigation prior to enactment of this section."

**Floor Amendment No. 3**

Amend **S.B. 172** on page 2, line 8, by striking "**60**" and adding "**50**".

The amendments were read.

Senator Sims moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 172** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chair; Armbrister, Bivins, Truan, and Shelley.

(Senator Montford in Chair)

**MESSAGE FROM THE HOUSE**

House Chamber  
May 28, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**H.C.R. 174**, Requesting the governor to return **H.B. 1962**.

**H.C.R. 175**, Directing the Senate Enrolling Clerk to make corrections in **S.B. 5** to account for **H.B. 1873**.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**HOUSE CONCURRENT RESOLUTION 174**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 174**, Requesting the governor to return **H.B. 1962**.

The resolution was read.

On motion of Senator Barrientos and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

**HOUSE CONCURRENT RESOLUTION 175**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 175**, Directing the Senate Enrolling Clerk to make corrections in **S.B. 5** to account for **H.B. 1873**.

The resolution was read.

On motion of Senator Bivins and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

(Senator Ratliff in Chair)

**HOUSE CONCURRENT RESOLUTION 128**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 128**, Directing all state agencies that are involved in the provision of health and human services to people with disabilities to develop and implement policies to improve access to state services by persons with disabilities and to monitor compliance with these policies by their contracted service providers.

The resolution was read.

On motion of Senator Zaffirini and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 28, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on **S.B. 7** by a vote of 103 Ayes, 41 Noes, 1 Present-not voting.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**HOUSE RESOLUTIONS ON FIRST READING**

The following resolutions received from the House were read first time and referred to the committees indicated:

**H.C.R. 130** to Committee on Natural Resources.

**H.C.R. 135** to Committee on Administration.

**H.C.R. 160** to Committee on Administration.

**SENATE BILL 892 WITH HOUSE AMENDMENTS**

Senator Montford called **S.B. 892** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend **S.B. 892** by striking Section 6 in its entirety and renumbering subsequent sections.

**Committee Amendment No. 2**

Amend **S.B. 892** as follows:

1. On page 1, line 8, strike the following words: "PAYMENT DATES: DELINQUENCY."

**Committee Amendment No. 3**

Amend **S.B. 892** as follows:

(1) Add a new section to the bill to read as follows:

**SECTION \_\_\_\_.** Section 31.041, Parks and Wildlife Code, is amended to read as follows:

**Sec. 31.041. DEALER'S AND MANUFACTURER'S NUMBER.** (a) A dealer or manufacturer of vessels ~~[motorboats]~~ in this state may obtain a dealer's and manufacturer's number for vessels the dealer or manufacturer ~~[motorboats he]~~ wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel ~~[boat]~~. The number shall be attached to any vessel ~~[motorboat]~~ that the dealer or manufacturer ~~[he]~~ sends temporarily on the water.

(b) The application for a number must state that the applicant is a dealer or manufacturer within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. The application must be accompanied by photographs of the business sufficient to show any sign the business is required to display and the extent of the space the business is required to maintain. The application must also be accompanied by a copy of the tax permit of the dealer or manufacturer issued by the comptroller under Chapter 151. Tax Code, if the dealer or manufacturer has a tax permit. The two-year fee for a dealer's and manufacturer's number is \$45 or an amount set by the commission, whichever amount is more. No number may be issued until the provisions of this section have been satisfied.

(c) A dealer or manufacturer holding a dealer's and manufacturer's number may issue a reasonable temporary facsimile of the number which

may be used by any authorized person. A person purchasing a vessel [motorboat] may use the dealer's number for a period not to exceed 15 days prior to filing an application for a certificate of number. The form of the facsimile and the manner of display shall be prescribed by the department.

(d) A dealer or manufacturer holding a dealer's and manufacturer's number may transfer a certificate of number or a certificate of title to a vessel or outboard motor without securing a certificate of number or certificate of title in the dealer's or manufacturer's name if the vessel or outboard motor is sold in the normal course of the dealer's or manufacturer's business. Any other person transferring a vessel or outboard motor must secure a certificate of number or certificate of title in the person's name before transferring the certificate of number or the certificate of title.

(2) Renumber the subsequent sections of the bill appropriately.

#### **Amendment No. 4**

Amend S.B. 892 to delete lines 17 and 18 on page 4 and replace with the following:

(2) under the provision of Section 111.104(c)(3) applicable to a refund claim filed after a jeopardy

The amendments were read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendments to S.B. 892 by a viva voce vote.

#### **SENATE RULE 11.19 SUSPENDED (Posting Rule)**

On motion of Senator Harris of Dallas and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Administration might consider the following resolutions today:

**H.C.R. 135  
H.C.R. 160**

#### **HOUSE CONCURRENT RESOLUTION 138**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 138**, Directing the Texas Department of Transportation to issue "U.S. Judge" plates to magistrates of the United States district courts.

The resolution was read.

On motion of Senator Sibley and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

#### **HOUSE CONCURRENT RESOLUTION 170**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 170**, Instructing the House Enrolling Clerk to make a correction to **H.B. 2281**.

The resolution was read.

On motion of Senator Rosson and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

#### **HOUSE CONCURRENT RESOLUTION 171**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 171**, Directing the House Enrolling Clerk to make a correction to **H.B. 74**.

The resolution was read.

On motion of Senator Carriker and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

#### **HOUSE CONCURRENT RESOLUTION 145**

The Presiding Officer laid before the Senate the following resolution:

**H.C.R. 145**, Requesting the Congress of the United States to enact the appropriate changes in the Internal Revenue Code to allow employers to set up tax-free medical savings accounts to control medical care spending.

The resolution was read.

On motion of Senator Bivins and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

#### **SENATE RULE 12.09(a) SUSPENDED**

On motion of Senator West and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **S.B. 226**.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 226 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **S.B. 226**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2223**

Senator Montford called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2223** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2223** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chair; Turner, Haley, Sibley, and Moncrief.

**CONFERENCE COMMITTEE ON HOUSE BILL 2740**

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2740** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2740** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Luna, Madla, Zaffirini, and Patterson.

**SENATE BILL 1314 WITH HOUSE AMENDMENT**

Senator Carriker called **S.B. 1314** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **S.B. 1314** as follows:

(1) In Section 1 of the bill, in added Section 25.2702, Government Code, add the following at the end of Subsection (c):

On the vote of the commissioners courts of both counties, the counties may collect additional fees and costs as provided by Section 51.702. The \$25,000 payment under Section 25.0015 for the judge shall be divided between the counties according to the ratio of each county's liability for the judge's salary. The state shall pay the appropriate amount to each county's salary fund in equal monthly installments as provided by Section 25.0015(b).

(2) Strike Section 6 of the bill and renumber current Section 7 of the bill as Section 6.

The amendment was read.

Senator Carriker moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 1314** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chair; Parker, Luna, West, and Sims.

**SENATE BILL 835 WITH HOUSE AMENDMENT**

Senator Luna called S.B. 835 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend S.B. 835, SECTION 1, as it amends Section 93A, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), as follows:

(1) Amend Subsection (a) by striking "a telephone number on" and inserting in lieu thereof "the telephone number of".

(2) Amend Subsection (b) by striking "one-half" and inserting in lieu thereof "one-fourth".

(3) Amend Subsection (c) by inserting after the word "Act" the following: "unless such provider, within 14 days of receiving written notice of a violation, takes corrective action to comply with the provisions of this section".

The amendment was read.

On motion of Senator Luna and by unanimous consent, the Senate concurred in the House amendment to S.B. 835 by a viva voce vote.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 28, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has refused to concur in Senate amendments to H.B. 570 and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Hilderbran, Chair; McCall, Corte, Brady, and Rudd.

The House has refused to concur in Senate amendments to H.B. 1077 and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Place, Chair; Seidlits, Black, Gray, and Earley.

The House has adopted the Conference Committee Report on S.B. 13 by a non-record vote.

The House has adopted the Conference Committee Report on S.B. 954 by a non-record vote.

The House has adopted the Conference Committee Report on H.B. 977 by a non-record vote.

The House has concurred in Senate amendments to H.B. 1608 by a non-record vote.

The House has concurred in Senate amendments to H.B. 1808 by a non-record vote.



The House has concurred in Senate amendments to **H.B. 2509** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1461** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2318** by a vote of 135 Ayes, 0 Noes, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1462** by a vote of 139 Ayes, 1 Noes, 2 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 532** by a record vote of 141 Ayes, 0 Noes, 1 Present-not voting.

The House has adopted the Conference Committee Report on **S.J.R. 49** by a record vote of 129 Ayes, 6 Noes, 1 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 89** by a non-record vote.

The House conferees are discharged and the House has concurred in Senate amendments to **H.B. 431** by a non-record vote.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1234**. The House conferees are: Representatives Hunter of Nueces, Chair; Junell, Swinford, Martin, and Delisi.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1058**. The House conferees are: Representatives Saunders, Chair; Craddick, Oliveira, Bomer, and Haggerty.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 172**. The House conferees are: Representatives B. Turner, Chair; West, Ramsay, Earley, and Saunders.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 987**. The House conferees are: Representatives Krusec, Chair; Carter, Chisum, Combs, and B. Turner.

The House conferees are discharged and the House has concurred in Senate amendments to **H.B. 2115** by vote of 128 Ayes, 4 Noes, 2 Present-not voting.

The House has refused to concur in Senate amendments to **H.B. 1643** and has requested the appointment of a conference committee to consider the differences between the two Houses. The House conferees are: Representatives Oliveira, Chair; B. Turner, Saunders, Hightower, and Cuellar of Hidalgo.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 684**. The House conferees are: Representatives Uher, Chair; Chisum, Saunders, Earley, and Kuempel.

**H.C.R. 74**, Directing the Texas Department of Human Services to seek a Medicaid waiver in order to expand the services administered by all of the Options for Independent Living programs.

**H.C.R. 172**, Instructing the Enrolling Clerk of the House of Representatives to make a correction to **H.B. 560**.

**H.C.R. 176**, Instructing the Enrolling Clerk of the House of Representatives to correct **H.B. 712**.

**H.C.R. 177**, Instructing the Enrolling Clerk of the House of Representatives to make a correction to **H.B. 2622**.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### SENATE BILL 540 WITH HOUSE AMENDMENTS

Senator Barrientos called **S.B. 540** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

##### Amendment No. 1

Amend **S.B. 540** as follows:

Amend SECTION 2 by adding a new Subsection (f) to read as follows:

"(f) The commissioner shall contract with a municipality to perform the commissioner's review and inspection functions for privately financed buildings that are not leased by the state or a political subdivision if

(1) the municipality requests permission to perform such duties,

(2) the municipality is staffed with a sufficient number of qualified personnel to perform such duties in the judgment of the commissioner, and

(3) the municipality agrees to contract terms required by the commissioner.

The commissioner shall require municipal personnel who perform such duties to comply with qualification or certification requirements adopted or approved by the commissioner. The commissioner, not later than April 1, 1994, shall adopt qualification requirements or implement certification programs under this subsection and shall commence entering into contracts with municipalities qualifying under this subsection."

##### Amendment No. 2

Amend **S.B. 540** as follows:

(1) In SECTION 1 of the bill, in Section 2(a)(2), Article 9102, Revised Statutes, strike "this subsection" and substitute "Subsection (a) or (b) of this section".

(2) In SECTION 1 of the bill, in Section 2(a)(4), Article 9102, Revised Statutes, insert "or facility" after "building".

(3) In SECTION 1 of the bill, in Section 2(a)(5), Article 9102, Revised Statutes, insert "or facility" between "building" and "defined".

(4) In SECTION 1 of the bill, strike amended Subsection (d) of Section 2, Article 9102, Revised Statutes, and substitute the following:

(d) An owner of a building described by Subsection (a)(3) of this section or of a building or facility leased or rented for use by the state through the use of federal funds, or the owner's designated agent, must present to the commissioner the proof required by Subsection (c)(2) of this section before the date the owner:

(1) submits a bid proposal in relation to the award of a contract for the lease or rental of the building or facility; or

(2) is awarded the contract for the lease or rental of the building or facility if the state does not advertise for bids.

(5) In SECTION 2 of the bill, strike amended Subsection (d) of Section 5, Article 9102, Revised Statutes, and substitute the following:

(d) All plans and specifications for construction or for the substantial renovation, modification, or alteration of a building or facility that has an estimated construction cost of \$50,000 or more and that is [buildings] subject to the provisions of this article shall be submitted to the department for review and approval prior to the time that construction or that substantial renovation, modification, or alteration on the building or facility begins in accordance with rules and regulations adopted by the commissioner. Plans [The plans] and specifications related to the building or facility shall be submitted to the department by the architect, interior designer, or engineer who has overall responsibility for the design of the constructed or reconstructed building or facility. The [building] owner shall submit the plans and specifications to the department if there is no architect, interior designer, or engineer with that responsibility [unless the cost of the construction or reconstruction project is less than \$50,000]. Likewise, any substantial modification of approved plans shall be resubmitted to the department for review and approval. The plans and specifications that are not approved or disapproved by the department within 30 days from the receipt of the plans and specifications are automatically approved. If an architect, interior designer, or engineer required to submit or resubmit plans and specifications to the department fails to do so in a timely manner, the commissioner shall report the fact to the Texas Board of Architectural Examiners or the State Board of Registration for Professional Engineers, as appropriate.

The amendments were read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendments to S.B. 540 by a viva voce vote.

(Senator Sims in Chair)

#### SENATE CONCURRENT RESOLUTION 107

Senator Henderson offered the following resolution:

WHEREAS, The senate has passed H.B. 1564 and returned it to the house of representatives; and

WHEREAS, Further consideration of the bill by the senate is necessary; now, therefore, be it

RESOLVED by the 73rd Legislature of the State of Texas, That the chief clerk of the house be authorized to return **H.B. 1564** to the senate for further consideration.

The resolution was read.

On motion of Senator Henderson and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2116**

Senator Shelley submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2116** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHELLEY  
PATTERSON  
SHAPIRO  
ARMBRISTER  
On the part of the Senate

YARBROUGH  
BOSSE  
CAMPBELL  
GUTIERREZ  
On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 210**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 210** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI  
MONCRIEF  
ELLIS  
PARKER

On the part of the Senate

VOWELL  
NAISHTAT  
McDONALD  
COOK

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of the provision of health care services and mental health services to certain persons; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.01. Chapter 161, Health and Safety Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. ABUSE, NEGLECT, AND UNPROFESSIONAL OR UNETHICAL CONDUCT IN HEALTH CARE FACILITIES

Sec. 161.131. DEFINITIONS. In this subchapter:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Section 10801 et seq.).

(2) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(3) "Hospital" has the meaning assigned by Section 241.003.

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section 571.003.

(6) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(7) "Mental health facility" has the meaning assigned by Section 571.003.

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their

respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Sec. 161.132. REPORTS OF ABUSE AND NEGLECT OR OF ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT. (a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 34, Family Code, and Chapter 48, Human Resources Code.

(d) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, Texas Commission on Alcohol and Drug Abuse, and each state health care regulatory agency by rule shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) Each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

(h) A person commits an offense if the person:

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

(j) In this section, "abuse" includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Sec. 161.133. MEMORANDUM OF UNDERSTANDING ON INSERVICE TRAINING. (a) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse by rule shall adopt a joint memorandum of understanding that requires each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The memorandum must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

Sec. 161.134. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

(1) reinstatement in the plaintiff's former position;

(2) compensation for lost wages; and

(3) reinstatement of lost fringe benefits or seniority rights.

(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Sec. 161.135. RETALIATION AGAINST NONEMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;



(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the Texas Department of Mental Health and Mental Retardation;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section 161.134(j).

Sec. 161.136. BROCHURE RELATING TO SEXUAL EXPLOITATION. (a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(b) The brochure shall include:

(1) procedures for filing a complaint relating to sexual exploitation, including any toll-free telephone number available; and

(2) the rights of a victim of sexual exploitation.

(c) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

Sec. 161.137. PENALTIES. In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing

law applicable to the individual or facility or of a rule adopted under that licensing law.

SECTION 1.02. The changes in law made by this article apply only to a cause of action that accrues on or after the effective date of this article. A cause of action that accrues before the effective date of this article is governed by the law in effect on the date the cause of action accrues, and that law is continued in effect for this purpose.

#### ARTICLE 2

SECTION 2.01. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 81 to read as follows:

#### CHAPTER 81. SEXUAL EXPLOITATION BY MENTAL HEALTH SERVICES PROVIDER

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Mental health services" means assessment, diagnosis, treatment, or counseling in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) "certified social worker" as defined by Section 50.001, Human Resources Code;

(B) "chemical dependency counselor" as defined by Section 1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Vernon's Texas Civil Statutes);

(C) "licensed professional counselor" as defined by Section 2, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes);

(D) "licensed marriage and family therapist" as defined by Section 2, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes);

(E) member of the clergy;

(F) "physician" who is "practicing medicine" as defined by Section 1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(G) "psychologist" offering "psychological services" as defined by Section 2, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes).

(3) "Patient" means an individual who seeks or obtains mental health services.

(4) "Sexual contact" means:

(A) "deviate sexual intercourse" as defined by Section 21.01, Penal Code;

(B) "sexual contact" as defined by Section 21.01, Penal Code;

(C) "sexual intercourse" as defined by Section 21.01, Penal Code; or

(D) requests by the mental health services provider for conduct described by Paragraph (A), (B), or (C). "Sexual contact" does not include conduct described by Paragraph (A) or (B) that is a part of a professionally recognized medical treatment of a patient.

(5) "Sexual exploitation" means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(6) "Therapeutic deception" means a representation by a mental health services provider that sexual contact with, or sexual exploitation by, the mental health services provider is consistent with, or a part of, a patient's or former patient's treatment.

(7) "Mental health services," as defined by this section, provided by a member of the clergy does not include religious, moral, and spiritual counseling, teaching, and instruction.

Sec. 81.002. SEXUAL EXPLOITATION CAUSE OF ACTION. A mental health services provider is liable to a patient or former patient of the mental health services provider for damages for sexual exploitation if the patient or former patient suffers, directly or indirectly, a physical, mental, or emotional injury caused by, resulting from, or arising out of:

(1) sexual contact between the patient or former patient and the mental health services provider;

(2) sexual exploitation of the patient or former patient by the mental health services provider; or

(3) therapeutic deception of the patient or former patient by the mental health services provider.

Sec. 81.003. LIABILITY OF EMPLOYER. (a) An employer of a mental health services provider is liable to a patient or former patient of the mental health services provider for damages if the patient or former patient is injured as described by Section 81.002 and the employer:

(1) fails to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the mental health services provider as a mental health services provider within the five years before the date of disclosure, concerning the possible occurrence of sexual exploitation by the mental health services provider of patients or former patients of the mental health services provider; or

(2) knows or has reason to know that the mental health services provider engaged in the sexual exploitation of the patient or former patient and the employer failed to;

(A) report the suspected sexual exploitation as required by Section 81.006; or

(B) take necessary action to prevent or stop the sexual exploitation by the mental health services provider.

(b) An employer or former employer of a mental health services provider is liable to a patient or former patient of the mental health services provider for damages if the patient or former patient is injured as described by Section 81.002 and the employer or former employer:

(1) knows of the occurrence of the sexual exploitation by the mental health services provider of the patient or former patient;

(2) receives a specific request by an employer or prospective employer of the mental health services provider, engaged in the business of providing mental health services, concerning the possible existence or nature of sexual exploitation by the mental health services provider; and

(3) fails to disclose the occurrence of the sexual exploitation.

(c) An employer or former employer is liable under this section only to the extent that the failure to take the action described by Subsection (a) or (b) was a proximate and actual cause of damages sustained.

(d) If a mental health professional who sexually exploits a patient or former patient is a member of the clergy, and the sexual exploitation occurs when the professional is acting as a member of the clergy, liability if any under this section is limited to the church, congregation, or parish in which the member of the clergy carried out the clergy member's pastoral duties:

(1) at the time the sexual exploitation occurs, if the liability is based on a violation of Subsection (a); or

(2) at the time of the previous occurrence of sexual exploitation, if the liability is based on a violation of Subsection (b).

(e) Nothing in Subsection (d) shall prevent the extension of liability under this section beyond the local church, congregation, or parish where the current or previous sexual exploitation occurred, as appropriate under Subsection (d), if the patient proves that officers or employees of the religious denomination in question at the regional, state, or national level:

(1) knew or should have known of the occurrences of sexual exploitation by the mental health services provider;

(2) received reports of such occurrences and failed to take necessary action to prevent or stop such sexual exploitation by the mental health services provider and that such failure was a proximate and actual cause of the damages; or

(3) knew or should have known of the mental health professional's propensity to engage in sexual exploitation.

Sec. 81.004. DAMAGES. (a) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(b) In addition to an award under Subsection (a), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

Sec. 81.005. DEFENSES. (a) It is not a defense to an action brought under Section 81.002 or 81.003 that the sexual exploitation of the patient or former patient occurred;

- (1) with the consent of the patient or former patient;
- (2) outside the therapy or treatment sessions of the patient or former patient; or
- (3) off the premises regularly used by the mental health services provider for the therapy or treatment sessions of the patient or former patient.

(b) It is a defense to an action brought under Section 81.002 or 81.003 by a former patient that the person was not emotionally dependent on the mental health services provider when the sexual exploitation began and the mental health services provider terminated mental health services with the patient more than two years before the date the sexual exploitation began.

(c) A person is considered not emotionally dependent for purposes of this chapter if the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the mental health services provider are not such that the mental health services provider knows or has reason to believe that the patient or former patient is unable to withhold consent to the sexual exploitation.

Sec. 81.006. DUTY TO REPORT. (a) If a mental health services provider or the employer of a mental health services provider has reasonable cause to suspect that a patient has been the victim of sexual exploitation by a mental health services provider during the course of treatment, or if a patient alleges sexual exploitation by a mental health services provider during the course of treatment, the mental health services provider or the employer shall report the alleged conduct not later than the 30th day after the date the person became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation occurred; and

(2) any state licensing board that has responsibility for the mental health services provider's licensing.

(b) Before making a report under this section, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.

(c) A report under this section need contain only the information needed to:

(1) identify the reporter;

(2) identify the alleged victim, unless the alleged victim has requested anonymity; and

(3) express suspicion that sexual exploitation has occurred.

(d) Information in a report is privileged information and is for the exclusive use of the prosecuting attorney or state licensing board that receives the information. A person who receives privileged information may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. The identity of an alleged victim of sexual exploitation by a mental health services provider may not be disclosed by the reporter, or by a person who has received or has access to a report or record, unless the alleged victim has consented to the disclosure in writing.

(e) A person who intentionally violates Subsection (a) or (d) is subject to disciplinary action by that person's appropriate licensing board and also commits an offense. An offense under this subsection is a Class C misdemeanor.

Sec. 81.007. LIMITED IMMUNITY FROM LIABILITY. (a) A person who, in good faith, makes a report required by Section 81.006 is immune from civil or criminal liability resulting from the filing of that report.

(b) Reporting under this chapter is presumed to be done in good faith.

(c) The immunity provided by this section does not apply to liability resulting from sexual exploitation by a mental health services provider of a patient or former patient.

Sec. 81.008. ADMISSION OF EVIDENCE. (a) In an action for sexual exploitation, evidence of the plaintiff's sexual history and reputation is not admissible unless:

(1) the plaintiff claims damage to sexual functioning; or

(2)(A) the defendant requests a hearing before trial and makes an offer of proof of the relevancy of the history or reputation; and

(B) the court finds that the history or reputation is relevant and that the probative value of the evidence outweighs its prejudicial effect.

(b) The court may allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Sec. 81.009. LIMITATIONS. (a) Except as otherwise provided by this section, an action under this chapter must be filed before the third anniversary of the date the patient or former patient understood or should have understood the conduct for which liability is established under Section 81.002 or 81.003.

(b) If a patient or former patient entitled to file an action under this chapter is unable to bring the action because of the effects of the sexual exploitation, continued emotional dependence on the mental health services provider, or threats, instructions, or statements by the mental health services provider, the deadline for filing an action under this chapter is tolled during that period, except that the deadline may not be tolled for more than 15 years.

(c) This section does not apply to a patient or former patient who is a "child" or a "minor" as defined by Section 11.01, Family Code, until that patient or former patient has reached the age of 18. If the action is brought by a parent, guardian, or other person having custody of the child or minor, it must be brought within the period set forth in this section.

SECTION 2.02. Chapter 21, Penal Code, is amended by adding Section 21.14 to read as follows:

Sec. 21.14. SEXUAL EXPLOITATION BY MENTAL HEALTH SERVICES PROVIDER. (a) In this section:

(1) "Mental health services" means assessment, diagnosis, treatment, or counseling in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) "certified social worker" as defined by Section 50.001, Human Resources Code;

(B) "chemical dependency counselor" as defined by Section 1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Vernon's Texas Civil Statutes);

(C) "licensed professional counselor" as defined by Section 2, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes);

(D) "licensed marriage and family therapist" as defined by Section 2, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes);

(E) member of the clergy;

(F) "physician" who is "practicing medicine" as defined by Section 1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(G) "psychologist" offering "psychological services" as defined by Section 2, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes).

(3) "Patient" means an individual who seeks or obtains mental health services.

(4) "Sexually exploitive behavior" means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(b) A person commits an offense if the person is a mental health services provider and intentionally:

(1) engages in sexual contact with a patient or former patient; or

(2) engages in sexually exploitive behavior with a patient or former patient.

(c) It is not a defense to prosecution under this section that the sexual contact or sexually exploitive behavior with the patient or former patient occurred:

(1) with the consent of the patient or former patient;

(2) outside the therapy or treatment sessions of the patient or former patient; or

(3) off the premises regularly used by the mental health services provider for the therapy or treatment sessions of the patient or former patient.

(d) It is a defense to prosecution under this section that the former patient was not emotionally dependent on the mental health services provider when the sexual contact occurred or the sexually exploitive behavior began and the mental health services provider terminated psychotherapy with the patient more than two years before the date the sexual contact occurred or the sexually exploitive behavior began.

(e) A person is considered emotionally dependent for purposes of this section if the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the mental health services provider are such that the mental health services provider knows or has reason to believe that the patient or former patient is unable to withhold consent to the sexual contact or the sexually exploitive behavior.

(f) It is a defense to prosecution under this section that the sexual contact is a part of a professionally recognized medical treatment of a patient.

(g) Except as provided by Subsection (h) of this section, an offense under this section is a felony of the third degree.

(h) If it is shown on the trial of an offense under this section that the defendant has been previously convicted of an offense under this section, the offense is a felony of the second degree.

SECTION 2.03. Section 50.021, Human Resources Code, is amended to read as follows:

Sec. 50.021. REVOCATION AND SUSPENSION. The department may refuse to issue or to renew a certificate or order of recognition, may place on probation a person whose certificate or order of recognition has been suspended, may reprimand a person with a certificate or order of recognition, or may revoke or suspend a certificate or order of recognition issued under this chapter for any of the following reasons:

(1) violating a provision of this chapter or a rule of the department;

(2) circumventing or attempting to circumvent this chapter or a rule of the department;

(3) participating, directly or indirectly, in a plan, scheme, or arrangement attempting or having as its purpose the evasion of this chapter or a rule of the department;

(4) engaging in unethical conduct;

(5) engaging in conduct which discredits or tends to discredit the profession of social work;

(6) performing an act, allowing an omission, or making an assertion or representation that is fraudulent, deceitful, or misleading or that in any manner tends to create a misleading impression;

(7) knowingly associating with or permitting or allowing the use of any certified person's professional services or professional identification in a project or enterprise that the person knows or with the exercise of reasonable diligence should know is a practice that violates this chapter or a rule of the department pertaining to the practice of social work;



(8) knowingly associating with or permitting the use of a certified person's name, professional services, professional identification, or endorsement in connection with a venture or enterprise that the person knows or with the exercise of reasonable diligence should know is a trade, business, or professional practice of a fraudulent, deceitful, misleading, or dishonest nature;

(9) revealing, directly or indirectly, or causing to be revealed a confidential communication transmitted to the certified person by a client or recipient of his services except as may be required by law;

(10) having a certificate or a license to practice social work in another jurisdiction denied, suspended, or revoked for reasons or causes the department finds would constitute a violation of this chapter or a rule pertaining to the practice of social work adopted by the department;

(11) having been convicted of a felony in an American jurisdiction; [or]

(12) refusing to do or perform any act or service for which the person is certified under this chapter solely on the basis of the recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(13) committing an act in violation of Section 21.14, Penal Code, or for which liability exists under Chapter 81, Civil Practice and Remedies Code.

SECTION 2.04. Section 16, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. LICENSE REFUSAL; DISCIPLINARY ACTIONS. The commission may refuse to issue or renew a license, place on probation a license holder whose license has been suspended, reprimand a license holder, or revoke or suspend a license issued under this Act for:

(1) violating or assisting another to violate this Act or a rule of the commission adopted under this Act;

(2) circumventing or attempting to circumvent this Act or a rule of the commission adopted under this Act;

(3) participating, directly or indirectly, in a plan the purpose of which is the evasion of this Act or a rule of the commission adopted under this Act;

(4) engaging in false, misleading, or deceptive conduct as defined by Section 17.46, Business & Commerce Code;

(5) engaging in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(6) revealing or causing to be revealed, directly or indirectly, a confidential communication made to the licensed chemical dependency counselor by a client or recipient of services, except as required by law;

(7) having a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the commission finds would constitute a violation of this Act or a commission rule established under this Act; [or]

(8) refusing to perform an act or service for which the person is licensed to perform under this Act on the basis of the client's or

recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(9) committing an act in violation of Section 21.14, Penal Code, or for which liability exists under Chapter 81, Civil Practice and Remedies Code.

SECTION 2.05. Section 25, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. After a hearing, the board may deny, suspend, or revoke a license or otherwise discipline a license holder if the applicant for license or the license holder has:

(1) been convicted of a felony or a misdemeanor involving moral turpitude;

(2) obtained or attempted to obtain registration by fraud or deception;

(3) used drugs or alcohol to an extent that affects professional competence;

(4) been grossly negligent in performing professional duties;

(5) been adjudicated mentally incompetent by a court of competent jurisdiction;

(6) practiced in a manner detrimental to the public health or welfare;

(7) advertised in a manner that tends to deceive or defraud the public;

(8) had a license or certification revoked by a licensing agency or by a certifying professional organization; [or]

(9) otherwise violated this Act or a rule or code of ethics adopted under this Act; or

(10) committed an act in violation of Section 21.14, Penal Code, or for which liability exists under Chapter 81, Civil Practice and Remedies Code.

SECTION 2.06. Subsection (a), Section 16, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board may revoke, [or] suspend, or refuse to renew the license of a counselor on proof that the counselor:

(1) has committed an act in violation of Section 21.14, Penal Code, or for which liability exists under Chapter 81, Civil Practice and Remedies Code;

(2) has violated this Act or a rule or code of ethics adopted by the board; or

(3) [(2)] is legally committed to an institution because of mental incompetence from any cause.

SECTION 2.07. Subsection (a), Section 23, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke, suspend, or refuse to renew the license or

certification of any psychologist or the certificate of any psychological associate or reprimand any psychologist upon proof that the psychologist:

(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state; [or]

(2) uses drugs or intoxicating liquors to an extent that affects his professional competency; [or]

(3) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; [or]

(4) except as provided by Section 15B of this Act, has aided or abetted a person, not a licensed psychologist, in representing that person as a psychologist within this state; [or]

(5) except as provided by Section 15B of this Act, has represented himself or herself to be a psychologist licensed in this state at a time he or she was not licensed to practice psychology in this state, or practiced psychology in this state without a license to practice psychology in this state; [or]

(6) has been guilty of unprofessional conduct as defined by the rules established by the Board; [or]

(7) for any cause for which the Board shall be authorized to take that action by another section of this Act; or

(8) has committed an act in violation of Section 21.14, Penal Code, or for which liability exists under Chapter 81, Civil Practice and Remedies Code.

SECTION 2.08. Chapter 81, Civil Practice and Remedies Code, as added by this article, applies only to a cause of action accruing on or after the effective date of this article. A cause of action accruing before that date is governed by the law in effect at the time the cause of action accrued, and that law is continued in effect for that purpose.

#### ARTICLE 3

SECTION 3.01. (a) Chapter 571, Health and Safety Code, is amended by adding Section 571.0065 to read as follows:

Sec. 571.0065. TREATMENT METHODS ADVISORY COMMITTEE.

(a) The board shall appoint an advisory committee on treatment standards that is composed of at least the following persons:

(1) one licensed psychiatrist;

(2) one licensed psychologist;

(3) one certified social worker;

(4) one licensed professional counselor;

(5) one licensed chemical dependency counselor;

(6) one licensed occupational therapist;

(7) two persons who have received mental health services, either voluntarily or involuntarily;

(8) one member from each of two private associations of persons who advocate on the behalf of or in the interest of persons with mental illness; and

(9) one person who has practiced rage therapy, trust development therapy, or rough signing as part of a professional practice for which the person is properly licensed or certified.

(b) The board may appoint additional members as it considers appropriate.

(c) The committee shall:

(1) review treatment methods used in mental health facilities;

(2) recommend to the board the treatment methods that should not be allowed, such as "rage therapy," "trust development therapy," "rough signing," and any other treatment method that the committee determines is physically or emotionally abusive and not clearly defined in established, professionally accepted clinical standards; and

(3) consider reports from state agencies on possible abusive treatment methods and on complaints relating to treatment methods.

(d) The committee shall meet at least once every six months.

(e) The board shall either adopt by rule or reject a committee recommendation not later than the 120th day after the date on which the recommendation is made. A standard established by rule under this section that applies to a private mental hospital may not be less restrictive than a standard that applies to a state mental hospital.

(f) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the committee.

(g) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the board under this section or that the board specifically refuses by rule to prohibit or authorize.

(b) Not later than February 1, 1994, the Texas Board of Mental Health and Mental Retardation shall appoint the advisory committee on treatment standards as prescribed by Section 571.0065, Health and Safety Code, as added by this section. The committee shall make its initial recommendations to the board not later than October 31, 1994.

SECTION 3.02. Chapter 241, Health and Safety Code, is amended by adding Section 241.0265 to read as follows:

Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND CHEMICAL DEPENDENCY. (a) The care and treatment of a patient receiving mental health services in a facility licensed by the department under this chapter or Chapter 577 are governed by the standards adopted by the Texas Department of Mental Health and Mental Retardation to the same extent as if the standards adopted by that department were rules adopted by the board under this chapter or Chapter 577.

(b) The care and treatment of a patient receiving chemical dependency treatment in a facility licensed by the department under this chapter are governed by the same standards that govern the care and treatment of a patient receiving treatment in a treatment facility licensed under Chapter 464 and that are adopted by the Texas Commission on Alcohol and Drug

Abuse, to the same extent as if the standards adopted by the commission were rules adopted by the board under this chapter.

(c) The department shall enforce the standards provided by Subsections (a) and (b). A violation of a standard is subject to the same consequence as a violation of a rule adopted by the board under this chapter or Chapter 577. The department is not required to enforce a standard if the enforcement violates a federal law, rule, or regulation.

SECTION 3.03. (a) Section 462.022, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the commission to provide the necessary services to minors; or

(B) a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent, managing conservator, or guardian if the minor is younger than 16 years of age [or other person authorized to consent to medical treatment of a minor under Section 35.01, Family Code]; or

(B) the minor, without parental consent, if the minor is 16 years of age or older [under Section 35.03, Family Code].

(c) A person or agency appointed as the guardian or a managing conservator of a minor younger than 16 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the minor only with the minor's consent.

(b) The changes in law made by this section apply only to consent for a minor's admission to a treatment facility or mental health facility given on or after the effective date of this section. Valid consent for a minor's admission given before the effective date of this section remains valid and continues in effect until withdrawn by the person who consented or by the minor, if the minor is 16 years of age or older.

#### ARTICLE 4

SECTION 4.01. Subdivision (9), Section 571.003, Health and Safety Code, is amended to read as follows:

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the Texas Department of Health [department];

(C) a community center;

(D) a facility operated by a community center or other entity the department designates to provide mental health services;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided

and that is licensed by the ~~[department or the]~~ Texas Department of Health; or

(F) a hospital operated by a federal agency.

SECTION 4.02. Section 577.001, Health and Safety Code, is amended to read as follows:

Sec. 577.001. LICENSE REQUIRED. (a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter ~~[or by the Texas Department of Health]~~.

(b) A community center or other entity designated by the Texas Department of Mental Health and Mental Retardation ~~[department]~~ to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter ~~[or by the Texas Department of Health]~~.

SECTION 4.03. Chapter 577, Health and Safety Code, is amended by adding Section 577.0011 to read as follows:

Sec. 577.0011. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

SECTION 4.04. Sections 577.002, 577.003, and 577.009, Health and Safety Code, are amended to read as follows:

Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A mental health facility operated by the Texas Department of Mental Health and Mental Retardation ~~[department]~~ or a federal agency need not be licensed under this chapter.

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental hospital licensed under this chapter that the Texas Department of Mental Health and Mental Retardation ~~[department]~~ designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community center or other entity the Texas Department of Mental Health and Mental Retardation ~~[department]~~ designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department ~~[or the Texas Department of Health]~~.

SECTION 4.05. Subsection (a), Section 577.010, Health and Safety Code, is amended to read as follows:

(a) The Texas Board of Mental Health and Mental Retardation ~~[board]~~ shall adopt rules and standards the board considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

SECTION 4.06. (a) Not later than September 1, 1993, all functions, powers, duties, funds, and obligations of the Texas Department of Mental Health and Mental Retardation relating to the licensure of mental health facilities, other than the power and duty to prescribe standards for those facilities, all employees who perform those duties, and all relevant records are transferred to the Texas Department of Health. A rule, form, or policy relating to this function is a rule, form, or policy of the Texas Department

of Health on transfer of the functions under this section and remains in effect until altered by the department.

(b) A power or duty assigned to the Texas Department of Mental Health and Mental Retardation by an Act of the 73rd Legislature, Regular Session, 1993, relating to licensing a facility under Chapter 577, Health and Safety Code, as amended by this article, including a power or duty to bring an action to enforce state law or to collect a penalty for a violation of state law, is a power or duty of the Texas Department of Health.

(c) Subsection (b) of this section does not apply to a power or duty assigned to the Texas Department of Mental Health and Mental Retardation that relates to prescribing standards for a facility.

#### ARTICLE 5

SECTION 5.01. Subchapter I, Chapter 161, Health and Safety Code, as added by Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991, is amended to read as follows:

##### SUBCHAPTER I. ILLEGAL REMUNERATION

##### Sec. 161.091. PROHIBITION ON ILLEGAL REMUNERATION.

(a) A person ~~[licensed, certified, or registered by a health care regulatory agency of this state]~~ commits an offense if the person intentionally or knowingly offers to pay or agrees to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

(b) It is a rebuttable presumption that a person has violated this section if:

(1) the person refers or accepts a referral of a person to an inpatient mental health facility or chemical dependency treatment facility;

(2) before the patient is discharged or furloughed from the inpatient facility, the person pays the referring person or accepts payment from the inpatient facility for outpatient services to be provided by the referring person after the patient is discharged or furloughed from the inpatient facility; and

(3) the referring person does not provide the outpatient services for which payment was made and does not return to the inpatient facility the payment for the services not provided.

(c) This section shall not be construed to prohibit advertising except that which is false, misleading, or deceptive or that which advertises professional superiority or the performance of a professional service in a superior manner and that is not readily subject to verification.

(d) ~~(e)~~ Except as provided by this section, an offense under this section is a Class A misdemeanor. If it is shown on ~~(in)~~ the trial of a person under ~~[violation of]~~ this section that the person has previously been convicted of an offense under ~~[a violation of]~~ this section or that the person was employed by a federal, state, or local government at the time the offense occurred, the offense is ~~[on conviction the person shall be punished for]~~ a felony of the third degree. In addition to any other penalties or remedies provided, a violation of this section shall be grounds

for disciplinary action by a [the] regulatory agency that has issued a license, certification, or registration to the person.

~~(e) [(d)] The appropriate health care regulatory agency may institute an action to enjoin a violation or potential violation of this section. The action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The regulatory agency shall be represented by the attorney general.~~

~~[(c)] This section shall not be construed to prohibit remuneration for advertising, marketing, or other services that are provided for the purpose of securing or soliciting patients provided the remuneration is set in advance, is consistent with the fair market value of the services, and is not based on the volume or value of any patient referrals or business otherwise generated between the parties.~~

~~[(f)] This section shall [not] be construed to permit [prohibit] any payment, business arrangements, or payments practice permitted [not prohibited] by 42 U.S.C. Section 1320a-7b(b) or any regulations promulgated pursuant thereto.~~

~~[(g)] This section shall not apply to licensed insurers, governmental entities, including intergovernmental risk pools established under Chapter 172, Local Government Code, and institutions as defined in the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), group hospital service corporations, or health maintenance organizations which reimburse, provide, offer to provide, or administer hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor.~~

Sec. 161.0915. EXEMPTION. (a) This subchapter does not apply to a health care information service that:

(1) provides its services to a consumer only by telephone communication on request initiated by the consumer and without charge to the consumer;

(2) provides information about health care providers to enable consumer selection of health care provider services without any direct influence by a health care provider on actual consumer selection of those services;

(3) in response to each consumer inquiry, on a nondiscriminatory basis, provides information identifying health care providers who substantially meet the consumer's detailed criteria based on consumer responses to standard questions designed to elicit a consumer's criteria for a health care provider, including criteria concerning location of the practice, practice specialties, costs and payment policies, acceptance of insurance coverage, general background and practice experience, and various personal characteristics;

(4) does not attempt through its standard questions for solicitation of consumer criteria or through any other means or methods to steer or lead a consumer to select or consider selection of a particular health care provider for health care provider services;

(5) identifies to a consumer;



(A) all health care providers who substantially meet the consumer's stated criteria and who are located within the zip code area in which the consumer elects to obtain services from a health care provider; or

(B) all health care providers substantially meeting the consumer's stated criteria who are located in zip code areas in the closest proximity to the elected zip code area if no health care provider substantially meeting the consumer's criteria is located within that zip code area;

(6) discloses to each consumer the relationship between the health care information service and health care providers participating in its services;

(7) does not provide or represent itself as providing diagnostic or counseling services or assessment of illness or injury and does not make any promises of cure or guarantees of treatment;

(8) does not provide or arrange for transportation of a consumer to or from the location of a health care provider;

(9) does not limit the scope of or direct its advertising or other marketing of its services to a particular health care provider specialty, to a particular segment of the population, or to persons suffering from a particular illness, condition, or infirmity;

(10) charges to and collects fees from a health care provider participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or on the value of or a percentage of the value of a professional service provided by the health care provider;

(11) does not limit participation by a health care provider in its services to a particular health care specialty or to a particular service provided by a health care provider;

(12) does not limit participation by a health care provider in its services for a reason other than:

(A) failure to have a current, valid license without limitation to practice in this state;

(B) failure to maintain professional liability insurance while participating in the service;

(C) significant dissatisfaction of consumers of the health care information service that is documented and can be proved;

(D) a decision by a peer review committee that the health care provider has failed to meet prescribed standards or has not acted in a professional or ethical manner; or

(E) termination of the contract between the health care provider and the health care information service by either party under the terms of the contract;

(13) maintains a customer service department to handle complaints and answer questions for consumers;

(14) maintains a customer follow-up system to monitor consumer satisfaction; and

(15) does not use, maintain, distribute, or provide for any purpose any information that will identify a particular consumer, such as a name, address, or telephone number, obtained from a consumer seeking its services other than for the purposes of:

(A) providing the information to the health care provider with whom an appointment is made;

(B) performing administrative functions necessary to operate the health care information service;

(C) providing directly to a consumer, at the request of that consumer on that consumer's initial contact with the health care information service, information relating to health-related support groups or providers of health-care-related services or equipment within the area or areas of interest requested by the consumer; or

(D) conducting analytical research on data obtained through provision of services and preparing statistical reports that generally analyze that data but do not in any manner identify one or more specific consumers.

(b) In this section:

(1) "Health care information service" means a person who provides information to a consumer regarding health care providers that can enable the consumer to select one or more health care providers to furnish health care services.

(2) "Health care provider" means a person licensed, certified, or registered by a state health care regulatory agency other than a:

(A) mental health facility as defined by Section 571.003;  
or

(B) treatment facility as defined by Section 464.001.

Sec. 161.092. NOTIFICATION OF REMUNERATION. (a) A person commits an offense if:

(1) the person, in a manner otherwise permitted under Section 161.091, accepts remuneration to secure or solicit patients or patronage for a person licensed, certified, or registered by a state health care regulatory agency; and

(2) does not, at the time of initial contact and at the time of referral, disclose to the patient:

(A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and

(B) that the person will receive remuneration, directly or indirectly, for securing or soliciting the patient.

(b) Except as otherwise provided by this section, an offense under this section is a Class A misdemeanor. If it is shown on the trial of a person under this section that the person has previously been convicted of an offense under this section or that the person was employed by a federal, state, or local government at the time the offense occurred, the offense is a felony of the third degree.

(c) In addition to other penalties or remedies provided by this subchapter, a violation of this section is grounds for disciplinary action by a regulatory agency that has issued a license, certification, or registration to the person.

Sec. 161.093. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action in a district court of Travis County or of a county in which any part of the violation occurs for an injunction or other process against a person who is violating this subchapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Sec. 161.094. CIVIL PENALTIES. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each day of violation and each act of violation. In determining the amount of the civil penalty, the court shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person; and

(5) the amount necessary to deter future violations.

(b) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action authorized by this section in a district court of Travis County or of a county in which any part of the violation occurs.

(c) The party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.093; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(d) The party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(e) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(f) The civil penalty and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

#### ARTICLE 6

SECTION 6.01. This Act takes effect September 1, 1993.

SECTION 6.02. (a) The changes in law made by this Act apply only to an offense committed or a violation that occurs on or after the effective date of this Act. For the purposes of this Act, an offense is committed or a violation occurs before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense committed or violation that occurs before the effective date of this Act is covered by the law in effect when the offense was

committed or the violation occurred, and the former law is continued in effect for this purpose.

SECTION 6.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 642**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 642 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS  
PARKER  
LEEDOM  
ROSSON  
LUCIO

On the part of the Senate

A. SMITH  
DELCO  
OLIVEIRA  
LINEBARGER  
DAVIS

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the creation of the Council on Workforce and Economic Competitiveness, the creation of local workforce development boards, and the development of an integrated state and local program delivery system serving all Texans.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

**ARTICLE 1. LEGISLATIVE FINDINGS**

**SECTION 1.01. LEGISLATIVE FINDINGS.** The legislature finds that:

(1) the economic future of this state and the prosperity of its citizens depend on the ability of businesses in this state to compete effectively in the world economy;

(2) a well-educated and highly trained workforce provides businesses in this state with the competitive edge critical for their success;

(3) the state's current workforce development effort is a fragmented array of more than 21 separately funded and administered education, job training, and employment programs operated by seven separate state agencies;

(4) this fragmented approach to service delivery results in the lack of clear accountability for results, duplication of services, inappropriate training, and wasted resources;

(5) consolidating the planning and budgeting functions of the various federal and state workforce development programs at the state and local level will improve the quality and effectiveness of services and provide businesses in this state with an element critical to their success, a high quality workforce; and

(6) empowering local business, labor, and community leaders to take a more active role in their communities' economic and workforce development will enhance the quality, efficiency, and responsiveness of these programs.

SECTION 1.02. SHORT TITLE. Articles 2 through 6 of this Act may be cited as the Workforce and Economic Competitiveness Act.

SECTION 1.03. APPLICATION OF SUNSET ACT. The Council on Workforce and Economic Competitiveness is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2001.

SECTION 1.04. DEFINITIONS. In this Act:

(1) "Council" means the Council on Workforce and Economic Competitiveness.

(2) "Human resource investment council" means a human resource investment council under the Job Training Reform Amendments Act of 1992 (Pub. L. No. 102-367, Section 701 et seq.).

(3) "Program year" means July 1 to June 30.

(4) "Workforce development" includes workforce education programs and workforce training and services.

(5) "Workforce education" means articulated career-path programs and the constituent courses of those programs that lead to initial or continuing licensure or certification or associate degree-level accreditation and that are subject to:

(A) initial and ongoing state approval or regional or specialized accreditation;

(B) a formal state evaluation that provides the basis for program continuation or termination;

(C) state accountability and performance standards; and

(D) regional or statewide employer-driven labor market demand documentation.

(6) "Workforce training and services" means training and services programs that are not included within the definition of workforce education.

## ARTICLE 2. COUNCIL ON WORKFORCE AND ECONOMIC COMPETITIVENES

SECTION 2.01. CREATION OF COUNCIL. The Council on Workforce and Economic Competitiveness is created as a state agency to act as a human resources investment council.

**SECTION 2.02. MEMBERSHIP OF COUNCIL.** (a) The council shall be appointed by the governor, who shall designate one of the business or labor representatives on the council to serve as presiding officer. The membership shall reflect the ethnic and geographic diversity of the state.

(b) The council shall be composed of:

(1) the following ex officio voting members:

- (A) the commissioner of education;
- (B) the commissioner of higher education;
- (C) the commissioner of health and human services;
- (D) the executive director of the Texas Department of Commerce; and
- (E) the administrator of the Texas Employment Commission;

(2) six voting members appointed by the governor who represent education, at least one of whom represents local public education, one of whom represents public postsecondary education, one of whom represents secondary vocational education, and one of whom represents postsecondary vocational education;

(3) seven voting members who represent organized labor appointed by the governor based on recommendations made by recognized labor organizations;

(4) seven voting members appointed by the governor who represent business and industry, including business members serving on local workforce development boards or private industry councils;

(5) one voting member appointed by the governor who represents a community-based organization;

(6) one voting member appointed by the governor who represents a joint-sponsored apprenticeship program as defined by the United States Department of Labor's Bureau of Apprenticeship and Training appointed from a list of three nominees submitted to the governor by the Apprenticeship and Training Association of Texas;

(7) one voting member appointed by the governor who represents a community-based adult literacy organization;

(8) one voting member appointed by the governor who represents adult basic and continuing education programs;

(9) six voting members appointed by the governor each of whom represent not more than one of the following categories:

- (A) literacy groups;
- (B) local welfare or public housing agencies;
- (C) units of local government;
- (D) adult education organizations;
- (E) teachers or counselors;
- (F) local service delivery organizations;
- (G) special needs populations;
- (H) rural and agricultural organizations;
- (I) proprietary schools;
- (J) members of the state legislature; and
- (K) other groups and organizations; and

(10) the following ex officio nonvoting members:

(A) the chair of the State Board of Education;  
(B) the chair of the Texas Higher Education Coordinating Board;  
(C) the presiding officer of the Texas Board of Human Services;  
(D) the presiding officer of the governing board of the Texas Department of Commerce;  
(E) the chair of the Texas Employment Commission;  
(F) the commissioner of the Texas Rehabilitation Commission; and  
(G) the executive director of the Texas Commission for the Blind.

(c) The presiding officer of the council shall designate a member of the council as assistant presiding officer to preside in the absence of the presiding officer.

SECTION 2.03. MEETINGS; TERMS. (a) The council shall meet at least quarterly and at other times at the call of the presiding officer or as provided by rules adopted by the council.

(b) A member of the council who does not serve as an ex officio member serves a six-year term, with one-third of those members' terms expiring in each odd-numbered year. An ex officio member shall continue to serve as a member of the council as long as the member continues to serve in the designated office.

SECTION 2.04. DESIGNATED REPLACEMENTS. A member of the council may designate another person to attend a meeting for the member. The designated person may participate in the activities and discussions of the council but may not vote.

SECTION 2.05. GROUNDS FOR REMOVAL FROM COUNCIL.

(a) It is a ground for removal from the council if a non-ex officio member:

(1) does not have at the time of appointment the qualifications required by Section 2.02 of this Act;

(2) does not maintain during service on the council the qualifications required by Section 2.02 of this Act;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(4) is absent from more than one-fourth of the regularly scheduled council meetings that the member is eligible to attend during a calendar year; or

(5) is absent from two consecutive council meetings for which the member received notice not less than 48 hours before the time of the meeting.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the council of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

**SECTION 2.06. COUNCIL FUNCTIONS. (a) The council shall:**

(1) promote the development of a well-educated, highly skilled workforce in this state through literacy, adult basic education, community education, apprenticeship, and state-of-the-art occupational skills education and training programs;

(2) serve as an advocate for the development of an integrated workforce development system to provide quality services addressing the needs of business and workers in this state;

(3) promote and assist in the development of an industry-based skills standards and certification system for occupations requiring less than a baccalaureate-level education and training;

(4) promote the development of high productivity workplaces in this state;

(5) recommend to the governor the components of a school and training-to-work transition process;

(6) develop and recommend to the governor a single strategic plan that establishes the framework for the budgeting and operation of all workforce development programs administered by agencies represented on the council;

(7) recommend to the governor the designation of workforce development areas for the local planning and delivery of workforce development programs;

(8) identify and recommend to the governor incentives to encourage the consolidation of local boards, councils, and committees;

(9) design and implement a state-local planning process for the state's workforce training and services programs;

(10) review local workforce training and services plans and make recommendations to the governor for approval;

(11) implement a statewide system for evaluating the effectiveness of all workforce development programs using the administrative records of the state's unemployment compensation program and other sources as appropriate;

(12) support research and demonstration projects designed to develop new programs and approaches to service delivery;

(13) provide for training and professional development for council members, local chief elected officials, workforce development boards and staff, and private industry councils and staff;

(14) serve as an advocate at the state and federal levels for the local workforce development boards;

(15) establish and operate a comprehensive labor market information system that serves employers, students, workers, and state and local planning organizations;

(16) ensure that occupational skills training is provided in occupations that are currently in demand at the local level and is directed toward high-skill and high-wage jobs;

(17) develop and recommend to the governor and legislature not later than November 15, 1994, a plan for consolidating all workforce development programs in this state;



(18) oversee the operation of the state's workforce development programs to assess the degree to which the programs are effective in achieving state and local goals and objectives;

(19) develop and recommend to the governor criteria for the establishment of local workforce development boards;

(20) develop objective criteria for granting waivers allowed under this Act;

(21) develop and recommend to the governor a plan to ensure client accessibility to workforce programs that includes a uniform statewide client application system for determining an applicant's eligibility for a workforce program for which state or federal financial assistance is available; and

(22) carry out the federal and state mandated duties and responsibilities for all advisory councils under applicable federal and state workforce development programs.

(b) The council shall assume the duty to:

(1) develop, with the assistance of the appropriate state agencies, and recommend to the governor state plans required by applicable federal laws in order for the state to receive federal funds;

(2) make policy recommendations to the governor regarding goals and priorities for both formula and discretionary funds for all applicable programs;

(3) participate directly in the development of the master plan for vocational education, as required by law, and recommend the plan to the State Board of Education, the Texas Higher Education Coordinating Board, and the governor;

(4) ensure that general revenue funds previously available to the Texas Literacy Council are used to support the efforts of local literacy councils in a manner consistent with the state strategic plan;

(5) recommend to the State Board of Vocational Education the division of federal funds between secondary and postsecondary educational agencies under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. Section 2301 et seq.); and

(6) make recommendations to the Texas Employment Commission regarding unemployment insurance issues pertinent to the responsibilities of the council.

(c) In addition to the council's powers and duties under Subsections (a) and (b) of this section, the council may:

(1) adopt rules necessary and essential to the internal functions and duties of the council but not rules related to the operation of a workforce development program;

(2) make expenditures, enter into contracts with public, private, and non-profit organizations or agencies, require reports to be made, conduct investigations, and take other actions necessary or suitable to fulfill the council's duties under this Act;

(3) delegate to the executive director any power or duty imposed on the council by law, including the authority to make a final order or decision but not including the authority to adopt rules;

(4) provide for the mediation or arbitration of disputes between agencies that perform functions for state and federal programs as provided by this Act;

(5) accept gifts, grants, and donations of money, goods, or services to be used only to accomplish the council's duties under this Act; and

(6) share employees with another state agency.

**SECTION 2.07. STRATEGIC PLAN.** (a) In addition to the other requirements of this Act, the strategic plan recommended by the council shall recognize and address literacy and basic education as activities that are critical to the well-being of individuals and the state without regard to whether the training and education is directed at preparing an individual for employment.

(b) The strategic plan shall include goals, objectives, and performance measures for all workforce development programs of state agencies that are represented on the council.

(c) On approval of the plan by the governor, an agency represented on the council shall use the strategic plan to develop the agency's operational plan.

**SECTION 2.08. TRAINING FOR LOCAL WORKFORCE DEVELOPMENT BOARD MEMBERS.** (a) The council shall provide management and board development training for all members of local workforce development boards. The training shall include information regarding the importance of high quality workforces to the economic prosperity of their communities and encourage board members to be advocates in their communities for effective and efficient workforce development programs. A member of a workforce development board must receive the training under this section not later than the third month after beginning service on a certified board or the member shall be ineligible to continue serving on the board.

(b) Training may be provided directly by the council or by a third party that has demonstrated experience in providing training to local workforce development or similar boards.

(c) Local workforce development boards shall provide 25 percent of the costs for all members' management and board development training.

**SECTION 2.09. JOB PLACEMENT INFORMATION.** (a) The council shall establish and maintain an automated follow-up and evaluation system based on unemployment insurance wage records maintained by the Texas Employment Commission, student follow-up information available through the Texas Higher Education Coordinating Board, and other information, as appropriate. Each state agency represented on the council shall provide information to support the council's follow-up and evaluation system as requested. The system shall be used to assist the council, local workforce development boards, institution boards, the Texas Higher Education Coordinating Board, the Central Education Agency, and other agencies in evaluating the labor market success and effectiveness of workforce development programs in this state.

(b) Evaluation data in the system shall include placement rates, wages paid, retention in employment statistics, the number of education and

training-related placements, and other factors, including the pursuit of additional education.

(c) The council may develop a method for collecting occupational information to supplement wage record data collected by the Texas Employment Commission. The council may request employers, providers, and other appropriate sources to provide placement, employment, and earnings data to the council.

(d) At least annually, the council shall issue an occupation-specific analysis by provider of the job placement performance of each workforce education program for the previous one-year, three-year, and five-year periods to:

(1) each provider of a workforce education program or workforce training and services program;

(2) the Texas Higher Education Coordinating Board for each provider of a workforce education program approved and administered by the board; and

(3) each local workforce development board for each provider of workforce training and services within the workforce development area.

(e) The Texas Higher Education Coordinating Board shall use the job placement information received under this section and other information to:

(1) evaluate the effectiveness of workforce education programs;

(2) determine whether a public or private workforce education program is not effective in placing persons who successfully complete the program in jobs related to the persons' training; and

(3) determine whether to continue, expand, or terminate a program established under Section 61.051, Education Code.

(f) The council and each local workforce development board shall use the information under this section and other information to determine whether a specific workforce training and service program administered by the local board is effective and whether to continue or discontinue the training and service program.

**SECTION 2.10. SUBCOMMITTEES; TECHNICAL ADVISORY COMMITTEES.** (a) The presiding officer of the council may appoint subcommittees consisting of members of the council for any purpose consistent with the duties and responsibilities of the council under this Act.

(b) The presiding officer of the council may appoint technical advisory committees composed of council members or persons who are not council members, or both members and non-members.

**SECTION 2.11. TRANSFER OF STATE ADVISORY COUNCIL RESPONSIBILITIES.** (a) The council shall assume the responsibilities assigned to the state advisory council under the following federal laws:

(1) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(2) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. Section 2301 et seq.);

(3) the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

(4) the Adult Education Act (20 U.S.C. Section 1201 et seq.);

(5) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.);  
(6) Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 681 et seq.);

(7) the employment program established under Section 6(d)(4), Food Stamp Act of 1977 (7 U.S.C. Section 2015(d)(4)); and

(8) the National Literacy Act of 1991 (Pub. L. 102-73 et seq.).

(b) The council shall assume the responsibilities formerly exercised by the following state advisory councils:

(1) the State Job Training Coordinating Council;

(2) the Texas Council on Vocational Education;

(3) the technical advisory committee to the State Occupational Information Coordinating Council;

(4) the Texas Literacy Council; and

(5) the Apprenticeship and Training Advisory Committee.

SECTION 2.12. FISCAL AGENT. The council may designate another state agency to serve as the council's fiscal agent if the designated agent agrees to the designation.

SECTION 2.13. EXECUTIVE DIRECTOR; COUNCIL STAFF.

(a) The presiding officer of the council shall appoint an executive director for the council.

(b) The executive director shall:

(1) report to the presiding officer of the council;

(2) perform duties assigned by the council and under state law;

(3) administer the day-to-day operations of the council;

(4) appoint officers, accountants, attorneys, experts, and other employees for the council and assign duties for these employees as necessary in the performance of the council's powers and duties under this Act;

(5) delegate authority to persons appointed under this section as the executive director considers to be reasonable and proper for the effective administration of the council; and

(6) perform other duties assigned by this Act.

(c) The executive director may adopt the administrative and personnel procedures of the council's fiscal agent rather than adopting new procedures for the council.

(d) The council shall have an independent staff with sufficient expertise to perform all duties and responsibilities assigned to the council under this Act and under state and federal law. The staff of the council may be supplemented by staff from other state agencies who are temporarily assigned to assist with special projects.

(e) The executive director of the State Occupational Information Coordinating Council shall report to the executive director of the council and shall provide labor market information, information relevant to workforce program evaluation, and technical assistance to the council and its staff as requested. The executive director of the State Occupational Information Coordinating Council may enter into contracts for products and services with State Occupational Information Coordinating Council membership agencies and other organizations if consistent with the state strategic plan.

**SECTION 2.14. PERSONNEL POLICIES.** (a) The executive director of the council shall develop an intra-agency career ladder program. The program shall require the intra-agency posting of all nonentry-level positions concurrently with any public posting.

(b) The executive director shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for council employees must be based on the system established under this subsection.

**SECTION 2.15. TRAINING; STANDARDS OF CONDUCT INFORMATION.** (a) Each council member shall comply with the member training requirements established by any other state agency that is given authority to establish the requirements for the council.

(b) The executive director shall provide to the council's members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers and employees.

**SECTION 2.16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES.** (a) The executive director shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes);

(2) a comprehensive analysis of the council's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the council's workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.

**SECTION 2.17. COUNCIL RECOMMENDATIONS; COOPERATION WITH STATE AGENCIES.** (a) The council shall develop recommendations periodically in each of the council's areas of responsibility and shall submit the recommendations to the governor.

(b) The governor shall consider the recommendations submitted under this section. The governor shall approve, disapprove, or modify the recommendations and return the recommendations to the council to be

forwarded as appropriate or forward an approved or modified recommendation without returning the recommendation to the council. An approved or modified recommendation shall be forwarded to the appropriate agency for implementation. A recommendation that is approved or modified that requires a change in state or federal law shall be forwarded to the appropriate legislative body for consideration.

(c) A recommendation that is not approved, disapproved, or modified by the governor before the 60th day after the date the recommendation is submitted shall be considered to be approved by the governor.

(d) State agencies that are responsible for the administration of human resources and workforce development programs in this state shall implement the recommendations if the recommendations do not violate an existing federal or state law, regulation, or rule.

(e) A state agency shall:

(1) provide requested information to the council in a timely manner;

(2) report on the implementation of the council's recommendations at the time and in the format requested by the council; and

(3) notify the governor, the executive director, and the presiding officer of the council if the agency determines that a recommendation cannot be implemented.

(f) A recommendation approved by the governor with regard to the state or federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.) shall be implemented by the agency responsible for the administration of that Act as required by federal law.

SECTION 2.18. FUNDING. (a) Federal funding for the operation of the council shall be allocated according to federal requirements.

(b) The council shall develop a budget to carry out the council's duties and responsibilities under this Act. The budget must be submitted to the governor and the Legislative Budget Board for approval. The budget shall identify funds appropriated for the biennium ending August 31, 1995, for planning and evaluation of a workforce development program administered by an agency represented on the council and shall recommend the transfer of those funds to the functions being assumed by the council.

(c) A state agency represented on the council shall provide funds for the support of the council in proportion to the agency's financial participation in the workforce development system.

#### ARTICLE 3. DESIGNATION OF WORKFORCE DEVELOPMENT AREAS

SECTION 3.01. DESIGNATION OF WORKFORCE DEVELOPMENT AREAS. (a) The governor shall, after receiving the recommendations of the Council on Workforce and Economic Competitiveness, publish a proposed designation of local workforce development areas for the planning and delivery of workforce development programs, each of which:

(1) is composed of more than one contiguous unit of general local government, that includes at least one county;

(2) is consistent with either a local labor market area, a metropolitan statistical area, one of the 24 substate planning areas, or one of the 10 uniform state service regions; and

(3) is of sufficient size to have the administrative resources necessary to provide for the effective planning, management, and delivery of workforce development services.

(b) Units of general local government, business and labor organizations, and other affected persons and organizations shall have an opportunity to comment on the proposed designation of a workforce development area and to request revisions of the designation.

(c) The governor, after considering all comments and requests for changes, shall make the final designation of workforce development areas. The governor may redesignate workforce development areas not more than once every two years. A redesignation must be made not later than four months before the beginning of a program year.

#### ARTICLE 4. LOCAL WORKFORCE DEVELOPMENT BOARDS

SECTION 4.01. CREATION OF LOCAL WORKFORCE DEVELOPMENT BOARDS. (a) The chief elected officials in a workforce development area designated by the governor under Section 3.01 of this Act may form, in accordance with rules established by the council, a local workforce development board to plan and oversee the delivery of all workforce training and services programs and evaluate all workforce development programs in the workforce development area.

(b) On agreement regarding the formation of a local workforce development board, the chief elected officials shall reduce the agreement to writing. The local government agreement shall include:

- (1) the purpose for the agreement;
- (2) the process that will be used to select the chief elected official who will act on behalf of the other chief elected officials;
- (3) the initial size of the local workforce development board;
- (4) the process to be used to appoint the board members, which must be consistent with applicable federal and state laws; and
- (5) the terms of office of the members of the board.

(c) The chief elected officials shall consider the views of all affected local organizations, including private industry councils and quality workforce planning committees, before making a final decision regarding the formation of a local workforce development board.

(d) None of the powers and duties granted a workforce development board under this Act may be exercised in a workforce development area until the chief elected officials in that area reach an agreement providing for the establishment of a local workforce development board and the board is certified by the governor.

(e) A private industry council in an area in which a local workforce development board is not created or in which the chief elective officers are unable to negotiate the establishment of a local workforce development board may not exercise any of the powers granted a local workforce development board by this Act, except for a power granted under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

SECTION 4.02. LOCAL BOARD MEMBERSHIP. (a) A local workforce development board is appointed by the chief elected officials consistent with the local government agreement and applicable federal and state laws. Board members serve fixed and staggered terms as provided

by the agreement or applicable federal or state laws and may continue to serve until successors are appointed. Board membership shall reflect the ethnic and geographic diversity of the workforce development area. A board is composed as follows:

(1) representatives of the private sector, who shall constitute a majority of the membership of the board and who are owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibilities;

(2) representatives of organized labor and community-based organizations, who shall constitute not less than 15 percent of the membership of the board; and

(3) representatives of each of the following:

(A) educational agencies, including secondary and postsecondary practitioners representing vocational education, that are representative of all educational agencies in the service delivery area;

(B) vocational rehabilitation agencies;

(C) public assistance agencies;

(D) economic development agencies;

(E) the public employment service;

(F) local literacy councils; and

(G) adult basic and continuing education organizations.

(b) The chairman of the board shall be selected from among the members of the board who represent the private sector.

(c) Private sector representatives on the board shall be selected from among individuals nominated by general-purpose business organizations after consulting with and receiving recommendations from other business organizations in the workforce development area. The number of the nominations shall be at least 150 percent of the number of individuals to be appointed under Subsection (a)(1) of this section. The nominations and the individuals selected from the nominations must reasonably represent the industrial and demographic composition of the business community. If possible, at least one-half of the business and industry representatives shall be representatives of small business, including minority business.

(d) In this section:

(1) "general purpose business organization" means an organization that admits to membership any for-profit business operating within the workforce development area; and

(2) "small business" means a private for-profit enterprise employing not more than 500 employees.

(e) The education representatives on the board shall be selected from among individuals nominated by regional or local educational agencies, vocational education institutions, institutions of higher education, including entities offering adult education, and general organizations of the institutions within the workforce development area.

(f) The labor representatives on the board shall be selected from individuals recommended by recognized state and local labor federations. If a state or local labor federation fails to nominate a sufficient number of individuals to meet the labor representation requirements of Subsection



(a)(2) of this section, individual workers may be included on the council to complete the labor representation.

(g) The remaining members of the board shall be selected from individuals recommended by interested organizations.

(h) The board may create committees as needed to carry out its duties and responsibilities. The board may create technical advisory groups composed of both council and noncouncil members to provide assistance as needed.

(i) Members of the board shall avoid the appearance of conflict of interest by recusing themselves on votes of the board directly affecting the funding of their organization or any organization that they represent.

**SECTION 4.03. CERTIFICATION OF BOARD.** The governor shall certify a local workforce development board if the governor determines that the board's composition and appointments are consistent with applicable federal and state laws and requirements and meet established state criteria. Certification shall be made or denied not later than the 30th day after the date a certification request is submitted to the governor. None of the powers and duties granted a board under this Act shall be exercised in a workforce development area until the board is certified by the governor.

**SECTION 4.04. FUNCTIONS OF BOARD.** (a) A board is directly responsible and accountable to the council for the planning and oversight of all workforce training and services in the workforce development area. A workforce development board shall ensure effective outcomes consistent with statewide goals, objectives, and performance standards approved by the governor. The council shall assist workforce development boards in designing effective measures to accomplish this responsibility.

(b) A board is directly responsible to the agency designated by the governor to administer the Job Training Partnership Act in this state for the administration of local programs under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(c) A board shall:

(1) serve as a single point of contact for local business to communicate their skill needs and influence the direction of all workforce development programs in the workforce development area;

(2) develop a local plan for addressing the workforce development needs of the workforce development area that:

(A) is responsive to the goals, objectives, and performance standards established by the governor;

(B) targets services to meet local needs, including the identification of industries and employers likely to employ workers who complete job training programs; and

(C) ensures that the workforce development system, including the educational system, has the flexibility to meet the needs of local businesses;

(3) designate the board or some other entity as the board's fiscal agent to be responsible and accountable for the management of all workforce development funds available to the board;

(4) create local workforce development centers as established in Article 5 of this Act;

(5) review plans for workforce education to ensure that the plans address the needs of local businesses and recommend changes in the delivery of education services as appropriate;

(6) assume the functions and responsibilities of local workforce development advisory boards, councils, and committees authorized by federal or state laws, including private industry councils, quality workforce planning committees, job service employer committees, and local general vocational program advisory committees;

(7) monitor and evaluate the effectiveness of the workforce development centers, state agencies and other contractors providing workforce training and services, and vocational and technical education programs operated by local education agencies and institutions of higher education to ensure that performance is consistent with state and local goals and objectives;

(8) promote cooperation and coordination among public organizations, community organizations, and private business providing workforce development services; and

(9) review applications as consistent with rules developed by the Texas Department of Commerce for funds under the smart jobs fund program under Subchapter J, Chapter 481, Government Code.

(d) The board may provide relevant labor market information and information regarding the availability of existing workforce development programs to the department in performing the board's duties under Subsection (c)(9) of this section.

(e) A provider must respond to a change recommended by a board under Subsection (c)(5) of this section not later than the 30th day after the date on which the provider receives the recommendation.

SECTION 4.05. LOCAL PLAN. (a) A local workforce development board shall develop a single plan for the delivery of all workforce training and services in the board's service area under the following programs:

(1) the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes);

(2) postsecondary vocational and technical job training programs that are not part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 108, 130, and 135, and Subchapter E, Chapter 88, Education Code;

(3) adult education programs under Section 11.18, Education Code;

(4) apprenticeship programs under Chapter 33, Education Code;

(5) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(6) the senior citizens employment program under Chapter 101, Human Resources Code;

(7) the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes);

(8) literacy funds available to the state under the National Literacy Act of 1991 (Pub. L. 102-73 et seq.);

(9) the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

(10) the job opportunities and basic skills program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682); and

(11) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d).

(b) A local plan shall identify:

(1) goals, objectives, and performance measures;

(2) the population to be served;

(3) the mix of services to be provided;

(4) the service providers; and

(5) the structure of the delivery system.

**SECTION 4.06. EMPLOYER-DRIVEN NEEDS ASSESSMENT.** (a) A board in conjunction with the council shall establish and operate an automated, interactive employer-driven labor market information system to identify occupation-specific labor demand in each workforce development area.

(b) A board shall periodically provide a report summarizing occupation-specific labor demand to each public postsecondary institution providing vocational and technical education and each entity under contract to the board to provide workforce training and services in a workforce development area.

(c) If a need is identified in the availability of workforce education as indicated by the labor market information system provided by the board, by a direct request of employers located in the workforce area, or as the result of an economic development incentive package designed to attract or retain an employer, the institution shall apply within 30 days to the Texas Higher Education Coordinating Board for approval to offer the needed workforce education. The coordinating board shall give immediate priority to the institution's application and shall notify the institution of the board's approval or disapproval not later than the 100th day after the date the application is received.

(d) If more than one institution in a workforce development area applies under Subsection (c) of this section to provide the needed workforce education, the Texas Higher Education Coordinating Board shall select one or more institutions to offer the needed education as provided by Section 61.051, Education Code.

(e) A local workforce development board may solicit other qualified providers to apply to the coordinating board to provide needed education to be funded through state-appropriated formula funds if an institution approved by the Texas Higher Education Coordinating Board does not offer the approved workforce education in a timely manner.

(f) A public community college shall promptly provide workforce training and services that are requested:

(1) by the workforce development board based on the board's labor demand information system for the area;

(2) by employers located in the college's taxing district when the request is presented directly to the college by the employers or through the workforce development board; or

(3) as part of an economic development incentive package designed to attract or retain an employer, including a package offered under the smart jobs fund program under Subchapter J, Chapter 481, Government Code.

(g) An institution of higher education that has local taxing authority and is governed by a locally elected board of trustees is the primary provider of local workforce training and services that are needed by an employer within the taxing district and funded fully or in part by local funds, except in Cameron, McLennan, and Potter counties, or by technical vocational funds administered by the Texas Higher Education Coordinating Board. A local workforce development board shall select another qualified local or statewide provider if the local institution does not promptly provide locally needed workforce training and services.

(h) This section does not prohibit an institution of higher education from offering workforce education or workforce training and services that:

(1) are needed by an employer located in the college's taxing district and that meet all applicable standards; or

(2) have been approved under applicable law and that are reviewed by the Texas Higher Education Coordinating Board.

(i) This Act may not be interpreted to restrict a person's authority to contract for the provision of workforce education or workforce training and services that are provided without state or federal funds.

**SECTION 4.07. LIST OF PUBLICLY FUNDED PROGRAMS AND CLASSES.** (a) A local education agency and public or private postsecondary educational institution shall provide the local workforce development board a list of all vocational-technical programs and classes the agency or institution offers that are funded by state or federal funds.

(b) A local workforce development board, with the assistance of the demand occupation list developed by the board, shall evaluate the supply of vocational-technical programs in relation to the demand for the programs and report any discrepancies between supply and demand to the appropriate educational institution, the Central Education Agency, the Texas Higher Education Coordinating Board, the Council on Workforce and Economic Competitiveness, and the Legislative Budget Board.

**SECTION 4.08. BUDGET AND STAFFING.** (a) A board shall establish a budget for the board that must be included in the local workforce development plan submitted to the Council on Workforce and Economic Competitiveness. A board may employ professional, technical, and support staff as necessary to carry out its strategic planning, oversight, and evaluation functions. A board's staff shall be separate from and independent of any organization providing workforce education or workforce training and services in the workforce development area.

(b) The requirement for separate staffing does not preclude a local workforce development board from designating a qualified organization to provide staff services to the board provided that the board arranges for independent evaluation of any other workforce services provided by the staffing organization and requests and obtains a waiver of the separate staffing requirement from the council. The request for the waiver must contain a detailed justification based on such factors as cost effectiveness,

prior experience, geographic or budgetary considerations, and availability of qualified applicants.

**SECTION 4.09. APPROVAL OF FISCAL AGENT.** The agency designated by the governor to administer the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.) in this state must approve the fiscal agent selected by a local workforce development board before the disbursement of any federal or state workforce development funds to the board. The agency's approval shall be based on an audit of the financial capability of the fiscal agent to assure that fiscal controls and fund accounting procedures necessary to guarantee the proper disbursement of and accounting for federal and state funds are in place.

**SECTION 4.10. CONTRACTING FOR SERVICE DELIVERY.** (a) A local workforce development board may not be a direct provider of workforce training and services. A board may request a waiver of this requirement from the council. The request for a waiver must include a detailed justification based on the lack of an existing qualified alternative for delivery of workforce training and services in the workforce development area.

(b) If a board receives a waiver to provide workforce training and services, the evaluation of results and outcomes is provided by the council.

**SECTION 4.11. INCENTIVES AND WAIVERS.** (a) A local workforce development board certified by the governor is eligible for incentives and program waivers to promote and support integrated planning and evaluation of workforce development programs.

(b) Incentives, to the extent feasible under existing federal and state workforce development laws, include priority for discretionary funding, including financial incentives for the consolidation of service delivery areas authorized under the federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(c) The governor, in concert with the council and the local workforce development boards, shall:

(1) identify specific barriers to integrated service delivery at the local level;

(2) request waivers from existing federal and state regulations; and

(3) advocate changes in federal and state laws to promote local service integration.

**SECTION 4.12. SANCTIONS FOR NONPERFORMANCE.** (a) The council shall provide technical assistance to local workforce development areas that fail to meet performance standards established under this Act and other applicable federal and state laws. If a local workforce development area fails to meet performance standards for two consecutive program years, the council shall develop and impose a reorganization plan that may include restructuring the local workforce development board, prohibiting the use of designated service providers, including state agencies, and merging the local workforce development area with another area. If nonperformance is directly attributable to a specific state agency, the council may select an alternative provider.

(b) A local workforce development area that is the subject of a reorganization plan may appeal to the governor to rescind or revise the

plan not later than the 30th day after the date of receiving notice of the plan.

**SECTION 4.13. SANCTIONS FOR LACK OF FISCAL ACCOUNTABILITY.** If, as a result of financial and compliance audits or for another reason, the agency designated by the governor to administer the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.) in this state determines that there is a substantial violation of a specific provision of this Act or another federal or state law or regulation and corrective action has not been taken, the council shall:

(1) issue a notice of intent to revoke all or part of the affected local plan;

(2) issue a notice of intent to immediately cease reimbursement of local program costs; or

(3) impose a reorganization plan under Section 4.12 of this Act for the local workforce development area.

**SECTION 4.14. NONPROFIT STATUS; ABILITY TO SOLICIT FUNDS.** (a) A local workforce development board may apply for and receive a charter as a private, nonprofit corporation under the laws of this state and may choose to be recognized as a Section 501(c)(3) organization under the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)).

(b) In addition to receiving funds specified in this Act, a local workforce development board may solicit additional funds from other sources, both public and private. A board may not solicit or accept money from an entity with whom the board contracts for the delivery of services.

#### **ARTICLE 5. LOCAL DELIVERY SYSTEM**

**SECTION 5.01. WORKFORCE DEVELOPMENT CENTERS.** A local workforce development board shall establish workforce development centers accessible to students, workers, and employers throughout the workforce development area. Each center shall provide access to information and services available in the workforce development area and shall address the individual needs of students, workers, and employers. The services available at a center shall be tailored to meet individual needs and shall include the following:

(1) labor market information, including the skills of the area workforce, available job openings, and the education, training, and employment opportunities in the local area, in the state, and as feasible, in the nation;

(2) common intake and eligibility determination for all workforce development programs and services;

(3) independent assessment of individual needs and the development of an individual service strategy;

(4) centralized and continuous case management and counseling;

(5) individual referral for services including basic education, classroom skills training, on-the-job training, and customized training; and

(6) supportive services, including child care, loans, and other forms of financial assistance required to participate in and complete training.

**SECTION 5.02. RIGHT TO KNOW.** A local workforce development center shall provide each person before the person participates in a

vocational or technical training program a written document that informs the person of current employment prospects and the current wage level for a person who completes the vocational or technical training program in which the person is considering participating.

#### ARTICLE 6. STATE AGENCY RESPONSIBILITIES

SECTION 6.01. FUND AVAILABILITY AND SERVICES. A state agency represented on the council shall provide to the council and each local workforce development board an estimate of fund availability and services provided by the state agency in each local workforce development area.

#### SECTION 6.02. PROVISION OF SERVICES BY STATE AGENCIES.

(a) A state agency represented on the council shall provide workforce training and services in accordance with the local workforce development plan developed by the board and approved by the governor and shall implement rules and policies consistent with the plan.

(b) This article may not be construed to require an affected state agency to violate state or federal law.

#### ARTICLE 7. CONFORMING AMENDMENTS

SECTION 7.01. CONFORMING AMENDMENT. Subsections (f) and (j), Section 61.051, Education Code, are amended to read as follows:

(f) The board shall encourage and develop new certificate programs in technical and vocational education in Texas public technical institutes and public community colleges as the needs of technology and industry may demand and shall recommend the elimination of such programs for which a need no longer exists. The board shall conduct a review of the certificate programs at least every four years or on the request of the Council on Workforce and Economic Competitiveness and shall terminate a program that does not meet performance review standards and other criteria established by the board. The board shall assume the leadership role and administrative responsibilities for state level administration of postsecondary technical-vocational education programs in Texas public community colleges, public technical institutes, and other eligible public postsecondary institutions. The board shall ensure that standardized minimum technical and skill-specific competency and performance standards for each workforce education program, as developed by the Council on Workforce and Economic Competitiveness, are used in the board's review, approval, or disapproval of a vocational and technical program financed by state and federal funds.

(j) No off-campus courses for credit may be offered by any public technical institute, public community college, or public college or university without specific prior approval of the board. The board may not prohibit a public junior college district from offering a course for credit outside the boundaries of the junior college district when such course has met the requirements for approval as adopted by the board. The board shall establish regulations for the coordination of credit ~~[and noncredit]~~ activities of adult and continuing education by public technical institutes, public community colleges, or public colleges and universities.

SECTION 7.02. CONFORMING AMENDMENT. Section 61.077, Education Code, is amended to read as follows:

Sec. 61.077. JOINT ADVISORY COMMITTEE. (a) There is hereby created a joint advisory committee for the purpose of advising the Texas Higher Education Coordinating Board, ~~[Texas College and University System]~~, and the State Board of Education in coordinating postsecondary vocational-technical activities, ~~[and]~~ vocational-technical teacher education programs offered or proposed to be offered in the colleges and universities of this state, and other relevant matters, including those listed in Section 61.076 of this code. The committee shall be composed of three members from the State Board of Education, appointed by the chairman of the board and three members from the Texas Higher Education Coordinating Board, ~~[Texas College and University System]~~, appointed by the chairman of the board, ~~[and]~~ one member designated by the presiding officer of the Council on Workforce and Economic Competitiveness, and one member representing business designated by the chair of the Texas Partnership for Economic Development ~~[of the Texas Council on Vocational Education; appointed by the chairman of the council]~~. A member of the ~~[coordinating]~~ board shall be designated as chairman of the joint advisory committee by the chairman of the ~~[coordinating]~~ board. The committee shall hold regular annual meetings as called by the chairman.

(b) The purposes of this committee shall include the following:

(1) to advise the two boards on the coordination of postsecondary vocational-technical education and the articulation between postsecondary vocational-technical education and secondary vocational-technical education;

(2) to facilitate the transfer of responsibilities for the administration of postsecondary vocational-technical education from the State Board of Education to the board ~~[Coordinating Board, Texas College and University System]~~, in accordance with Section 111(a)(I) of the Carl D. Perkins Vocational Education Act, Public Law 98-524; ~~[and]~~

(3) to advise the State Board of Education, when it acts as the State Board of Vocational Education, on the following:

(A) ~~[the allocation between secondary and postsecondary education of funds received by the State of Texas from the United States government under the Vocational Education Act of 1963, as amended, and other federal statutes relating to postsecondary vocational-technical education;~~

~~[(B)]~~ the transfer of federal funds to the ~~[coordinating]~~ board for allotment to eligible public postsecondary institutions of higher education;

~~[(B)]~~ ~~[(C)]~~ the vocational-technical education funding for projects and institutions as determined by the ~~[coordinating]~~ board when the State Board of Vocational Education is required by federal law to endorse such determinations;

~~[(C)]~~ ~~[(D)]~~ the development and updating of the state plan for vocational-technical education and the evaluation of programs, services, and activities of postsecondary vocational-technical education and such amendments to the state plan for vocational-technical education as may relate to postsecondary education; ~~[and]~~



(D) [(E)] other matters related to postsecondary vocational-technical education; and

(E) the coordination of curricula, instructional programs, research, and other functions as appropriate, including areas listed in Section 61.076 of this code, school-to-work and school-to-college transition programs, and professional development activities; and

(4) to advise the Council on Workforce and Economic Competitiveness on educational policy issues related to workforce preparation.

SECTION 7.03. CONFORMING AMENDMENT. The Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes) is amended by adding Section 7A to read as follows:

Sec. 7A. PRIVATE INDUSTRY COUNCIL; LOCAL WORKFORCE DEVELOPMENT BOARD. For the purposes of this Act, private industry council refers to both:

(1) the entity described as a private industry council by the federal Act; and

(2) a local workforce development board in a local market area in which a local workforce development board created under Article 4, Workforce and Economic Competitiveness Act, has been established.

#### ARTICLE 8. TRANSITION PROVISIONS

SECTION 8.01. EFFECTIVE DATE; TRANSITION. (a) This Act takes effect September 1, 1993.

(b) The Council on Workforce and Economic Competitiveness shall be appointed and operational not later than September 1, 1993.

(c) The state advisory councils listed in Section 2.11 of this Act are abolished September 1, 1993.

(d) The materials, furniture, and other assets and property and the unexpended and unobligated appropriations and other funds of the councils and committees abolished under this Act shall be transferred to the Council on Workforce and Economic Competitiveness not later than September 1, 1993.

SECTION 8.02. REPEALER. The following laws are repealed:

(1) Section 481.025, Government Code;

(2) Subchapter B, Chapter 31, Education Code; and

(3) Section 33.05, Education Code.

SECTION 8.03. MISCELLANEOUS TRANSITION PROVISIONS.

(a) The chief elected officials of a workforce development area may apply for certification of a local workforce development board on or after January 1, 1995. The chief elected officials may request a waiver to allow the officials to establish a local workforce development board before that date from the Council on Workforce and Economic Competitiveness.

(b) To provide continuity, the chief elected officials shall consider appointing persons to the local workforce development boards who are serving or who have served previously on a private industry council, a quality workforce planning committee, a job service employer committee, and any other entity affected by this Act.

(c) A local workforce development board established under this Act and certified by the governor shall establish local workforce development centers not later than the 180th day after the board is certified.

SECTION 8.04. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 16**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 16 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN  
WHITMIRE  
ELLIS  
SIBLEY

HILL  
D. JONES  
BAILEY

On the part of the Senate    On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to certain offenses committed on school premises or in drug-free zones; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.134 to read as follows:

Sec. 481.134. DRUG-FREE ZONES. (a) In this section:

(1) "Institution of higher education" means any public or private technical institute, junior college, senior college or university, medical or dental unit, or other agency of higher education as defined by Section 61.003, Education Code.

(2) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more separate apparatus intended for the recreation of children, such as slides, swing sets, and teeterboards.

(3) "Premises" means real property and all buildings and appurtenances pertaining to the real property.

(4) "School" means a private or public elementary or secondary school.

(5) "Video arcade facility" means any facility that:

(A) is open to the public, including persons who are 17 years of age or younger;

(B) is intended primarily for the use of pinball or video machines; and

(C) contains at least three pinball or video machines.

(6) "Youth center" means any recreational facility or gymnasium that:

(A) is intended primarily for use by persons who are 17 years of age or younger; and

(B) regularly provides athletic, civic, or cultural activities.

(b) The minimum term of confinement or imprisonment for an offense and the maximum fine for an offense under Section 481.112, 481.113, 481.114, 481.119, or 481.120 are doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises owned, rented, or leased by a school or an institution of higher learning or a playground; or

(2) in, on, or within 300 feet of the premises of a public or private youth center, public swimming pool, or video arcade facility.

SECTION 2. Subsections (b) and (c), Section 8, Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(b)(1) A prisoner under sentence of death is not eligible for parole.

(2) If a prisoner is serving a life sentence for a capital felony, the prisoner is not eligible for release on parole until the actual calendar time the prisoner has served, without consideration of good conduct time, equals 35 calendar years.

(3) If a prisoner, other than a prisoner described by Subdivision (4) of this subsection, is serving a sentence for the offenses listed in Subdivision (1)(B), (C), or (D) of Section 3g(a), Article 42.12 of this code, or if the judgment contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-fourth of the maximum sentence or 15 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years.

(4) If a prisoner is serving a sentence for which the punishment is increased under Section 481.134, Health and Safety Code, the prisoner is not eligible for release on parole until the prisoner's actual calendar time served, without consideration of good conduct time, equals five years or the maximum term to which the prisoner was sentenced, whichever is less.

(5) Except as provided by Subsection (m) of this section, all other prisoners shall be eligible for release on parole when their calendar time

served plus good conduct time equals one-fourth of the maximum sentence imposed or 15 years, whichever is less.

(c) Except as otherwise provided by this subsection, a prisoner who is not on parole shall be released to mandatory supervision by order of a parole panel when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the state and shall be amenable to conditions of supervision ordered by the parole panel. A prisoner may not be released to mandatory supervision if the prisoner is serving a sentence for an offense and the judgment for the offense contains an affirmative finding under Subdivision (2), Subsection (a), Section 3g, Article 42.12, of this code or if the prisoner is serving a sentence for:

- (1) a first degree felony under Section 19.02, Penal Code (Murder);
- (2) a capital felony under Section 19.03, Penal Code (Capital Murder);
- (3) a first degree felony or a second degree felony under Section 20.04, Penal Code (Aggravated Kidnapping);
- (4) a second degree felony under Section 22.011, Penal Code (Sexual Assault);
- (5) a second degree or third degree felony under Section 22.02, Penal Code (Aggravated Assault);
- (6) a first degree felony under Section 22.021, Penal Code (Aggravated Sexual Assault);
- (7) a first degree felony under Section 22.03, Penal Code (Deadly Assault on Law Enforcement or Corrections Officer or Court Participant);
- (8) a first degree felony under Section 22.04, Penal Code (Injury to a Child or an Elderly Individual);
- (9) a first degree felony under Section 28.02, Penal Code (Arson);
- (10) a second degree felony under Section 29.02, Penal Code (Robbery);
- (11) a first degree felony under Section 29.03, Penal Code (Aggravated Robbery); ~~or~~
- (12) a first degree felony under Section 30.02, Penal Code (Burglary), if the offense is punished under Subsection (d)(2) or (d)(3) of that section; or
- (13) a felony for which the punishment is increased under Section 481.134, Health and Safety Code (Drug-Free Zones).

SECTION 3. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.135 to read as follows:

Sec. 481.135. MAPS AS EVIDENCE OF LOCATION OR AREA.

(a) In a prosecution under Section 481.134, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of drug-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 481.134; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Criminal Evidence.

SECTION 4. Chapter 46, Penal Code, is amended by adding Section 46.13 to read as follows:

Sec. 46.13. PENALTY IF OFFENSE COMMITTED WITHIN WEAPON-FREE ZONE. (a) Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown on trial of the offense that the offense was committed on the premises of a primary or secondary school subject to or eligible for accreditation by the Central Education Agency.

(b) This section does not apply to an offense under Section 46.04 (a)(1) of this code.

SECTION 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. This Act takes effect September 1, 1993.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

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**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 850**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 850** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO  
ROSSON  
MADLA  
PATTERSON

RODRIGUEZ  
COLEMAN  
SOLIS  
McDONALD  
PUENTE

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 546**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 546** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS  
HENDERSON  
HARRIS OF TARRANT  
WEST  
ZAFFIRINI

On the part of the Senate

SCHECHTER  
BRADY  
GOODMAN  
S. THOMPSON  
ALVARADO

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1049**

Senator Parker submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 1049 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PARKER  
TRUAN  
BARRIENTOS  
SHELLEY  
CARRIKER

On the part of the Senate

EARLEY  
COOK  
GRAY  
RAMSAY

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the prevention of, the damage, cleanup, and costs related to, and liability for oil spills in coastal waters of the state; providing for response to the discharge of oil and other pollutants in the coastal waters of the state; authorizing appropriations from the coastal protection fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 40.002, Natural Resources Code, is amended to read as follows:

Sec. 40.002. POLICY. (a) The legislature finds and declares that the preservation of the Texas coast is a matter of the highest urgency and priority. It is the policy of this state to keep its coastal waters, rivers, lakes, estuaries, marshes, tidal flats, beaches, and public lands as pristine as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests. Spills, discharges, and escapes of crude oil, petroleum, and other such substances resulting from their handling, storage, and transportation, particularly by vessel, endanger the coastal environment of the state, public and private property on the coast, and the well-being of those deriving their livelihood from marine-related activity in coastal waters. The hazards posed by the handling, storage, and transportation of these substances in the coastal waters are contrary to the paramount interests of the state.

These state interests outweigh the economic burdens imposed under this chapter.

(b) The legislature finds and declares that the natural resources of the state and particularly those in the coastal waters of the state offer significant benefits to the citizens of Texas. These natural resources are important for their existence and their recreational, aesthetic, and commercial value. It is the policy of the state to protect these natural resources and to restore, rehabilitate, replace, and/or acquire the equivalent of these natural resources with all deliberate speed when they have been damaged. The legislature finds and declares that it is difficult to assess the value of these natural resources and to quantify injury to natural resources at a reasonable cost. The procedures and protocols utilized by the trustees must therefore consider the unique characteristics of each spill incident and the location of the natural resources affected. It is the intent of the legislature that natural resource damage assessment methodologies be developed for the purpose of reasonably valuing the natural resources of the State of Texas in the event of an oil spill and that the state recover monetary damages or have actions commenced by the spiller as early as possible to expedite the restoration, rehabilitation, and/or replacement of injured natural resources.

(c) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

- (1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;
- (2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges;
- (3) provide for development of a state coastal discharge contingency plan through planning and coordination with the Texas Water Commission to protect coastal waters from all types of spills and discharges; and
- (4) administer a fund to provide for funding these activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

(d) [(c)] The legislature declares that it is the intent of this chapter to support and complement the Oil Pollution Act of 1990 (Pub. L. 101-380) and other federal law, specifically those provisions relating to the national contingency plan for cleanup of oil and hazardous substance spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resources trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law.

SECTION 2. Section 40.003, Natural Resources Code, is amended to read as follows:

Sec. 40.003. DEFINITIONS. In this chapter:

- (1) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.



(2) "Coastal waters" means the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Comprehensive assessment method" means a method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury to natural resources resulting from an unauthorized discharge of oil.

(5) "Comptroller" means the comptroller of public accounts.

(6) ~~(5)~~ "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate.

(7) ~~(6)~~(A) "Damages" means compensation:

(i) to an owner, lessee, or trustee for any direct, documented loss of, injury to, or loss of use of any real or personal property or natural resources injured ~~damaged~~ by an unauthorized discharge of oil;

(ii) to a state or local government for any direct, documented net loss of taxes or net costs of increased entitlements or public services; or

(iii) to persons, including but not limited to holders of an oyster lease or permit; persons owning, operating, or employed on commercial fishing, oystering, crabbing, or shrimping vessels; persons owning, operating, or employed by seafood processing concerns; and others similarly economically reliant on the use or acquisition of natural resources for any direct, documented loss of income, profits, or earning capacity from the inability of the claimant to use or acquire natural resources arising solely from injury ~~damage~~ to the natural resources from an unauthorized discharge of oil.

(B) With respect to natural resources, "damages" includes the cost to assess, restore, rehabilitate, or replace injured ~~damaged~~ natural resources, or to mitigate further injury ~~damage~~, and their diminution in value after such restoration, rehabilitation, replacement, or mitigation.

(8) ~~(7)~~ "Discharge of oil" means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters or at a place adjacent to coastal waters where, unless controlled or removed, an imminent threat of pollution to coastal waters exists.

(9) ~~(8)~~ "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be

recognized as a discharge cleanup organization, provided the commissioner or the United States properly certifies or classifies the organization.

(10) [(9)] "Federal fund" means the federal Oil Spill Liability Trust Fund.

(11) [(10)] "Fund" means the coastal protection fund.

(12) [(11)] "Harmful quantity" means that quantity of oil the discharge of which is determined by the commissioner to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(13) [(12)] "Hazardous substance" means any substance, except oil, designated as hazardous by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and designated by the Texas Water Commission.

(14) [(13)] "Marine terminal" means any terminal facility used for transferring crude oil to or from vessels.

(15) [(14)] "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(16) [(15)] "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(17) [(16)] "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Water Commission.

(18) [(17)] "Owner" or "operator" means:

(A) any person owning, operating, or chartering by demise a vessel; or

(B) any person owning a terminal facility or a person operating a terminal facility by lease, contract, or other form of agreement.

(19) [(18)] "Person in charge" means the person on the scene who is directly responsible for a terminal facility or vessel when a discharge of oil occurs or a particular duty arises under this chapter.

(20) [(19)] "Person responsible" or "responsible person" means:

(A) the owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate;

(B) in the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment; and

(C) any other person who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

(21) [(20)] "Pollution" means the presence of harmful quantities of oil from an unauthorized discharge in coastal waters or in or on adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes.

(22) [(21)] "Response costs" means:

(A) with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this chapter, and costs of any reasonable measures to prevent or limit damage to the public health, safety, or welfare, public or private property, or natural resources; or

(B) with respect to an actual or threatened discharge of a hazardous substance, only costs incurred to supplement the response operations of the Texas Water Commission.

(23) [(22)] "Terminal facility" or "facility" means any waterfront or offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge of oil from the facility could threaten coastal waters, including but not limited to any such facility owned or operated by a public utility or a governmental or quasi-governmental body, but does not include any temporary storage facilities used only in connection with the containment and cleanup of unauthorized discharges of oil.

(24) [(23)] "Trained personnel" means one or more persons who have satisfactorily completed an appropriate course of instruction developed under Section 40.302 of this code or [and] all other training requirements as determined by the commissioner.

(25) "Trustee" means a natural resources trustee of the state as designated by the governor under federal law.

(26) [(24)] "Unauthorized discharge of oil" means any discharge of oil, or any discharge of oil emanating from a vessel into waters adjoining and accessible from coastal waters, that is not authorized by a federal or state permit.

(27) [(25)] "Unauthorized discharge of hazardous substances" means a spill or discharge subject to Subchapter G, Chapter 26, Water Code.

(28) [(26)] "Vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

(29) [(27)] "Texas Water Commission" means the Texas Natural Resource Conservation Commission.

SECTION 3. Subsection (d), Section 40.053, Natural Resources Code, is amended to read as follows:

(d) The commissioner shall establish regional response committees or utilize the area committees established by federal law to advise and provide input in the development of site-specific discharge contingency response plans.

(1) Membership on these committees shall include broad-based representation from local governments, industry, resource agencies, and citizens groups and shall include staff from the General Land Office.

(2) The committees shall develop regional response recommendations and provide evaluation of response and recommendations for improvement to the commissioner following an actual or threatened unauthorized discharge.

SECTION 4. Section 40.102, Natural Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The state or federal on-scene coordinator may authorize the decanting of recovered water during containment, cleanup, and response activities resulting from an unauthorized discharge of oil.

SECTION 5. Section 40.107, Natural Resources Code, is amended to read as follows:

Sec. 40.107. ~~[PRESUMPTION OF]~~ NATURAL RESOURCES DAMAGES. (a)(1) In any action to recover natural resources damages, the amount of damages established by the commissioner in conjunction with the [state-designated natural resources] trustees, according to the procedures and plans contained in the state coastal discharge contingency plan, shall create a rebuttable presumption of the amount of such damages.

(2) The commissioner shall represent the consensus position of the trustees whenever a collective decision or agreement is required by this section.

(3) Whenever trustees cannot achieve a consensus, the commissioner may invoke mediation to settle any disputed matter related to this section. The mediation shall be immediately commenced and shall be concluded within 10 days of its commencement. The trustees shall abide by the consensus achieved through mediation.

(4) The trustees shall enter into a memorandum of agreement which describes the mediation process of Subdivision (3) of this subsection.

(b) The commissioner may establish the rebuttable presumption by submitting to the court a written report of the amounts computed or expended according to the state plan. The written report shall be admissible in evidence.

(c)(1) The commissioner, in conjunction with the trustees, shall develop an inventory that identifies and catalogs the physical locations, the seasonal variations in location, and the current condition of natural resources; provides for data collection related to coastal processes; and identifies the recreational and commercial use areas that are most likely to suffer injury from an unauthorized discharge of oil. The inventory shall be completed by September 1, 1995, and shall be incorporated into the state coastal discharge contingency plan after public review and comment.

(2) The physical locations surveyed for the inventory of natural resources shall include, at a minimum, the following priority areas:

(A) the Galveston Bay system and the Houston Ship Channel;

(B) the Corpus Christi Bay system;

(C) the lower Laguna Madre;

(D) Sabine Lake; and

(E) federal and state wildlife refuge areas.

(3) The current condition of selected natural resources inventoried and cataloged shall be determined by, at a minimum, a baseline sampling and analysis of current levels of constituent substances selected after considering the types of oil most frequently transported through and stored near coastal waters.

(4) The commissioner shall adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil. As developed through negotiated rulemaking with the trustees and other interested parties, the procedures and protocols shall require the trustees to assess natural resource damages by considering the unique characteristics of the spill incident and the location of the natural resources affected. These procedures and protocols shall be adopted by rule, by the trustee agencies after negotiation, notice, and public comment, by June 1, 1994, and shall be incorporated into the state coastal discharge contingency plan.

(5) The administrative procedures and protocols shall include provisions which address:

(A) notification by the commissioner to all trustees in the event of an unauthorized discharge of oil;

(B) coordination with and among trustees, spill response agencies, potentially responsible parties, experts in science and economics, and the public; and

(C) participation in all stages of the assessment process by the potentially responsible party, as consistent with trustee responsibilities.

(6) The administrative procedures and protocols shall also require the trustees to:

(A) assist the on-scene coordinator, during spill response activities and prior to the time that the state on-scene coordinator determines that the cleanup is complete, in predicting the impact of the oil and in devising the most effective methods of protection for the natural resources at risk;

(B) identify appropriate sampling and data collection techniques to efficiently determine the impact on natural resources of the unauthorized discharge of oil;

(C) initiate, within 24 hours after approval for access to the site by the on-scene coordinator, an actual field investigation which may include sampling and data collection; the protocols shall require that the responsible party and the trustees be given, on request, split samples and copies of each other's photographs utilized in assessing the impact of the unauthorized discharge of oil; and

(D) establish plans, including alternatives that are cost-effective and efficient, to satisfy the goal of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources.

(7)(A) The administrative procedures and protocols shall also include the following types of assessment procedures and deadlines for their completion:

(i) an expedited assessment procedure which may be used in situations in which the spill has limited observable mortality and restoration activities can be speedily initiated and/or in which the quantity of oil discharged does not exceed 1,000 gallons; the purpose of utilizing the expedited assessment procedure is to allow prompt initiation of restoration, rehabilitation, replacement, and/or acquisition of an equivalent natural resource without lengthy analysis of the impact on affected natural resources; this procedure shall, at a minimum, require that the trustees consider the following items:

(aa) the quantity and quality of oil discharged;

(bb) the time period during which coastal waters are affected by the oil and the physical extent of the impact;

(cc) the condition of the natural resources prior to the unauthorized discharge of oil; and

(dd) the actual costs of restoring, rehabilitating, and/or acquiring the equivalent of the injured natural resources;

(ii) a comprehensive assessment procedure for use in situations in which expedited or negotiated assessment procedures are not appropriate; and

(iii) any other assessment method agreed upon between the responsible person and the trustees, consistent with their public trust duties.

(B) The trustees shall determine, within 60 days of the determination by the on-scene coordinator that the cleanup is complete, whether:

(i) action to restore, rehabilitate, or acquire an equivalent natural resource is required;

(ii) an expedited assessment which may include early commencement of restoration, rehabilitation, replacement, and/or acquisition activities, may be required; and

(iii) a comprehensive assessment is necessary.

(C) The trustees may petition the commissioner for a longer period of time to make the above determination by showing that the full impact of the discharge on the affected natural resources cannot be determined in 60 days.

(D) The trustees shall complete the comprehensive assessment procedure within 20 months of the date of the determination by the state on-scene coordinator that the cleanup is complete. The trustees may petition the commissioner for a longer period of time to complete the assessment by showing that the full impact of the discharge on the affected natural resources cannot be determined in 20 months.

(E) Any assessment generated by the trustees shall be reasonable and have a rational connection to the costs of conducting the assessment and of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. The trustees shall ensure that the cost of any restoration, rehabilitation, replacement, or acquisition project shall not be disproportionate to the value of the natural resource

before the injury. The trustees shall utilize the most cost-effective method to achieve restoration, rehabilitation, replacement, or acquisition of an equivalent resource. Furthermore, the trustees shall take into account the quality of the actions undertaken by the responsible party in response to the spill incident, including but not limited to containment and removal actions and protection and preservation of natural resources.

(F) The potentially responsible party shall make full payment within 60 days of the completion of the assessment by the trustees or, if mediation pursuant to this paragraph is conducted, within 60 days of the conclusion of the mediation. To facilitate an expedited recovery of funds for natural resource restoration and to assist the trustees and the responsible party in the settlement of disputed natural resource damage assessments at their discretion and at any time, all disputed natural resource damage assessments shall be referred to mediation as a prerequisite to the jurisdiction of any court. Results of the mediation and any settlement offers tendered during the mediation shall be treated as settlement negotiations for the purposes of admissibility in a court of law. Either the trustees or the potentially responsible person may initiate the mediation process, after an assessment has been issued, by giving written notice to the commissioner, who shall give written notice to all parties. One mediator shall be chosen by the trustees and one mediator shall be chosen by the responsible parties. Within 45 days of the receipt of the assessment from the trustees, the mediators shall be designated. The mediation shall end 135 days after the receipt of the assessment from the trustees.

SECTION 6. Subsection (a), Section 40.114, Natural Resources Code, is amended to read as follows:

(a) Any vessel with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operates in coastal waters or waters adjoining and accessible from coastal waters shall maintain a written vessel-specific discharge prevention and response plan that satisfies the requirements of rules promulgated under this chapter. This section shall not apply to any dedicated response vessel or to any other vessel for activities within state waters related solely to the containment and cleanup of oil, including response-related training or drills.

SECTION 7. Subsection (a), Section 40.152, Natural Resources Code, is amended to read as follows:

(a) Money in the fund may be disbursed for the following purposes and no others:

(1) administrative expenses, personnel and training expenses, and equipment maintenance and operating costs related to implementation and enforcement of this chapter;

(2) response costs related to abatement and containment of actual or threatened unauthorized discharges of oil incidental to unauthorized discharges of hazardous substances;

(3) response costs and damages related to actual or threatened unauthorized discharges of oil;

(4) assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources damaged by an unauthorized discharge of oil;

(5) in an amount not to exceed \$50,000 annually, the small spill education program;

(6) in an amount not to exceed \$1,250,000 annually, interagency contracts under Section 40.302 of this code;

(7) ~~[(6)]~~ the purchase of response equipment under Section 40.105 of this code within two years of the effective date of this chapter, in an amount not to exceed \$4 million; thereafter, for the purchase of equipment to replace equipment that is worn or obsolete;

(8) an inventory under Section 40.107 of this code, to be completed by September 1, 1995, in an amount not to exceed \$6 million; and

(9) ~~[(7)]~~ other costs and damages authorized by this chapter.

SECTION 8. Section 40.201, Natural Resources Code, is amended to read as follows:

Sec. 40.201. FINANCIAL RESPONSIBILITY. (a) Each owner or operator of a vessel subject to Section 40.114 of this code and operating within coastal waters or waters adjoining and accessible from coastal waters or any terminal facility subject to this code shall establish and maintain evidence of financial responsibility for costs and damages from unauthorized discharges of oil pursuant to federal law or in any other manner ~~[a lesser amount as]~~ provided in this chapter.

(b) If a vessel subject to Section 40.114 of this code or a terminal facility is not required under federal law to establish and maintain evidence of financial responsibility, the owner or operator of that vessel or terminal facility shall establish and maintain evidence in an amount and ~~[a]~~ form prescribed by rules promulgated under this code.

(c) Any owner or operator of a vessel that is a member of any protection and indemnity mutual organization, which is a member of the international group, any other owner or operator that is an assured of the Water Quality Insurance Syndicate, or an insured of any other organization approved by the commissioner, and which is covered for oil pollution risks up to the amounts required by federal law is in compliance with the financial responsibility requirements of this chapter. The commissioner shall specifically designate the organizations and the terms under which owners and operators of vessels shall demonstrate financial responsibility.

(d) After an unauthorized discharge of oil, a vessel shall remain in the jurisdiction of the commissioner until the owner, operator, or person in charge has shown the commissioner evidence of financial responsibility. The commissioner may not detain the vessel longer than 12 hours after the vessel has proven ~~[proving]~~ financial responsibility.

(e) ~~[(d)]~~ In addition to any other remedy or enforcement provision, the commissioner may suspend a registrant's discharge prevention and response certificate or may deny a vessel entry into any port in coastal waters for failure to comply with this section.

SECTION 9. Section 40.203, Natural Resources Code, is amended to read as follows:

Sec. 40.203. LIABILITY FOR NATURAL RESOURCES DAMAGES. (a) The commissioner, on behalf of the trustees, shall seek reimbursement from the federal fund for damages to natural resources in excess of the



liability limits prescribed in Section 40.202 of this code. If that request is denied or additional money is required following receipt of the federal money, the commissioner has the authority to pay the requested reimbursement from the fund for a period of two years from the date the federal fund grants or denies the request for reimbursement.

(b) In addition to liability under Section 40.202 of this code, persons responsible for actual or threatened unauthorized discharges of oil are liable for ~~all~~ natural resources damages attributable to the discharge.

(c) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a vessel shall not exceed the following:

(1) for a vessel that carries oil in bulk, as cargo, the greater of:

(A) \$1,200 per gross ton; or

(B)(i) in the case of a vessel greater than 3,000 gross tons, \$10 million; or

(ii) in the case of a vessel of 3,000 gross tons or less, \$2 million; or

(2) for any other vessel, \$600 per gross ton or \$500,000, whichever is greater.

(d) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a terminal facility shall not exceed the following:

(1) for each terminal facility with a capacity:

(A) above 150,000 barrels, \$70 per barrel not to exceed \$350,000,000;

(B) from 70,001 to 150,000 barrels, \$10,000,000;

(C) from 30,001 to 70,000 barrels, \$5,000,000;

(D) from 10,000 to 30,000 barrels, \$2,000,000;

(2) for any other terminal, \$500,000.

(e) The commissioner shall ensure that there will ~~[There may]~~ be no double recovery of damages or response costs.

(f) If any actual or threatened unauthorized discharge of oil was the result of gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation, the person responsible for such gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation is liable for the full amount of all damages to natural resources.

SECTION 10. Subsection (c), Section 40.255, Natural Resources Code, is repealed.

SECTION 11. Subchapter G, Chapter 40, Natural Resources Code, is amended by adding Section 40.304 to read as follows:

Sec. 40.304. SMALL SPILL EDUCATION PROGRAM. The commissioner shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, offshore support vessels, ferries, cruise ships, ports, marinas, and recreational boats. The small spill education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of motor oil and hydraulic fluid during routine maintenance, and spills during refueling.

The program shall illustrate proper disposal of oil and promote strategies to meet shoreside oil handling and disposal needs of targeted groups. The program shall include a series of training materials and workshops and the development of educational materials.

SECTION 12. This Act takes effect September 1, 1993.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE JOINT RESOLUTION 13**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.J.R. 13 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LUCIO  
BIVINS  
MONTFORD  
RATLIFF  
SIBLEY

COUNTS  
DUNCAN  
SWINFORD

On the part of the Senate

On the part of the House

**SENATE JOINT RESOLUTION**

proposing a constitutional amendment relating to the amount and expenditure of certain constitutionally dedicated funding for public institutions of higher education.

**BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

SECTION 1. Article VII, Section 17(a), of the Texas Constitution is amended to read as follows:

(a) In the fiscal year beginning September 1, 1985, and each fiscal year thereafter, there is hereby appropriated out of the first money coming into the state treasury not otherwise appropriated by the constitution \$100 million to be used by eligible agencies and institutions of higher education

for the purpose of acquiring land either with or without permanent improvements, constructing and equipping buildings or other permanent improvements, major repair or rehabilitation of buildings or other permanent improvements, ~~[and] acquisition of capital equipment, library books and library materials, and paying for acquiring, constructing, or equipping or for major repair or rehabilitation of buildings, facilities, other permanent improvements, or capital equipment used jointly for educational and general activities and for auxiliary enterprises to the extent of their use for educational and general activities.~~ For the five-year period that begins on September 1, 2000, and for each five-year period that begins after that period, the legislature, during a ~~[During the]~~ regular session ~~[of the legislature]~~ that is nearest, but preceding, a five-year period, ~~[the beginning of each fifth fiscal year dating from September 1, 1985, the legislature]~~ may by two-thirds vote of the membership of each house increase ~~[adjust]~~ the amount of the constitutional appropriation for the five-year period ~~[ensuing five years]~~ but may not adjust the appropriation in such a way as to impair any obligation created by the issuance of bonds or notes in accordance with this section.

SECTION 2. Article VII, Section 17(b), of the Texas Constitution is amended to read as follows:

(b) The funds appropriated under Subsection (a) of this section shall be for the use of the following eligible agencies and institutions of higher education (even though their names may be changed):

(1) East Texas State University including East Texas State University at Texarkana;

(2) Lamar University including Lamar University at Orange and Lamar University at Port Arthur;

(3) Midwestern State University;

(4) University of North Texas ~~[State University]~~;

(5) The University of Texas—Pan American ~~[University]~~ including The [Pan American] University of Texas at Brownsville;

(6) Stephen F. Austin State University;

(7) Texas College of Osteopathic Medicine;

(8) Texas State University System Administration and the following component institutions:

(9) Angelo State University;

(10) Sam Houston State University;

(11) Southwest Texas State University;

(12) Sul Ross State University including Uvalde Study

Center;

(13) Texas Southern University;

(14) Texas Tech University;

(15) Texas Tech University Health Sciences Center;

(16) Texas Woman's University;

(17) University of Houston System Administration and the following component institutions:

(18) University of Houston~~—University Park~~;

(19) University of Houston—Victoria;

(20) University of Houston—Clear Lake;

- (21) University of Houston—Downtown;  
(22) ~~Texas A&M University—Corpus Christi; [University System of South Texas System Administration and the following component institutions:]~~  
(23) ~~Texas A&M International [Corpus Christi State] University;~~  
(24) ~~[Laredo State University;~~  
(25) ~~Texas A&M [A&I] University—Kingsville; [and]~~  
(25) ~~[(26)] West Texas A&M [State] University; and~~  
(26) ~~Texas State Technical College System and its campuses, but not its extension centers or programs.~~

SECTION 3. Article VII, Section 17, of the Texas Constitution is amended by adding Subsection (d-1) to read as follows:

(d-1) Notwithstanding Subsection (d) of this section, the allocation of the annual appropriation to Texas State Technical College System and its campuses may not exceed 2.2 percent of the total appropriation each fiscal year.

SECTION 4. Article VII, Sections 17(e), (f), and (g), of the Texas Constitution are amended to read as follows:

(e) Each governing board authorized to participate in the distribution of money under this section is authorized to expend all money distributed to it for any of the purposes enumerated in Subsection (a). In addition, ~~[unless a single bonding agency is designated as hereinafter provided,]~~ such governing board may issue bonds and notes for the purposes of refunding bonds or notes issued under this section or prior law, acquiring land either with or without permanent improvements, constructing and equipping buildings or other permanent improvements, acquiring capital equipment, library books, and library materials, paying for acquiring, constructing, or equipping or for major repair or rehabilitation of buildings, facilities, other permanent improvements, or capital equipment used jointly for educational and general activities and for auxiliary enterprises to the extent of their use for educational and general activities, and for major repair and rehabilitation of buildings or other permanent improvements, and may pledge up to 50 percent of the money allocated to such governing board pursuant to this section to secure the payment of the principal and interest of such bonds or notes. Proceeds from the issuance of bonds or notes under this subsection shall be maintained in a local depository selected by the governing board issuing the bonds or notes. The bonds and notes issued under this subsection shall be payable solely out of the money appropriated by this section and shall mature serially or otherwise in not more than 10 years from their respective dates. All bonds issued under this section shall be sold only through competitive bidding and are subject to approval by the attorney general. Bonds approved by the attorney general shall be incontestable. The permanent university fund may be invested in the bonds and notes issued under this section. ~~[In lieu of the authority granted to each governing board herein, the legislature by general law may designate a single agency to issue bonds and notes authorized under this section and transfer to that agency the authority to collect and pledge money to the payment of such bonds and notes for the purposes, to the extent, and subject to the restrictions of this section. Provided, that~~

~~such agency shall be authorized to issue such bonds and notes for the benefit of an eligible institution and pledge money collected hereunder only as directed by the governing board of each eligible institution.]~~

(f) The funds appropriated by this section may not be used for the purpose of constructing, equipping, repairing, or rehabilitating buildings or other permanent improvements that are to be used only for student housing, intercollegiate athletics, or auxiliary enterprises.

(g) ~~The [Except for that portion of the allocated funds that may be required to be transferred to a single bonding agency, if one is created, the]~~ comptroller of public accounts shall make annual transfers of the funds allocated pursuant to Subsection (d) directly to the governing boards of the eligible institutions.

SECTION 5. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by S.J.R. 13, 73rd Legislature, Regular Session, 1993, and expires September 2, 1995.

(b) Section 2 of the constitutional amendment takes effect September 1, 1995.

SECTION 6. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 2, 1993. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment relating to the amount and expenditure of certain constitutionally dedicated funding for public institutions of higher education."

The Conference Committee Report was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON SENATE BILL 297

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 297 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BARRIENTOS  
LUNA  
LUCIO  
TURNER  
ROSSON

On the part of the Senate

McCOULSKEY  
DEAR  
HOCHBERG

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to funding for school counseling programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (j), Section 16.152, Education Code, is amended to read as follows:

(j) From the total amount of funds appropriated for allotments under this section, the commissioner of education shall, each fiscal year, withhold \$7,500,000 or a greater amount as determined in the General Appropriations Act ~~the amount of \$5,000,000~~ and distribute that amount for programs under Subchapter V, Chapter 21, of this code. A program established under that subchapter is required only in school districts in which the program is financed by funds distributed under this section or other funds distributed by the commissioner for a program under that subchapter. In distributing those funds, preference shall be given to a school district that received funds for a program under this subsection for the preceding school year.

SECTION 2. This Act applies beginning with the 1993-1994 school year.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2067

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 2067 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS  
WHITMIRE  
ROSSON

COLEMAN  
KRUSEE  
GALLEGO

PATTERSON

On the part of the Senate

HERNANDEZ

GIDDINGS

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 393**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 393** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER

MADLA

MONTFORD

HALEY

On the part of the Senate

LINEBARGER

DANBURG

DELCO

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 947**

Senator Montford submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 947** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONTFORD  
ARMBRISTER  
TURNER  
WEST  
BROWN

On the part of the Senate

GALLEGO  
PUENTE  
JUNELL  
H. CUELLAR  
SADLER

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to continuing legal education for certain attorneys, judges, court personnel, and justices of the peace.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 56.001, Government Code, is amended to read as follows:

(a) The judicial and court personnel training fund is created in the state treasury and shall be administered by the ~~[supreme]~~ court of criminal appeals.

SECTION 2. Subsection (i), Section 56.001, Government Code, is amended to read as follows:

(i) On requisition of the ~~[supreme]~~ court of criminal appeals, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in Section 56.003. A warrant may not exceed the amount appropriated for any one fiscal year. At the end of each state fiscal year, any unexpended balance in the fund in excess of \$500,000 shall be transferred to the general revenue fund.

SECTION 3. Section 56.003, Government Code, is amended to read as follows:

Sec. 56.003. USE OF FUNDS. (a) The ~~[supreme]~~ court of criminal appeals may not use more than three percent of the money appropriated in any one fiscal year to hire staff and provide for the proper administration of this chapter.

(b) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of appellate courts, district courts, county courts at law, and county courts performing judicial functions as required by the ~~[supreme]~~ court of criminal appeals under Section 74.025 and of their court personnel.

(c) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of justice courts as required by the ~~[supreme]~~ court of criminal appeals under Section 74.025 and of their court personnel.

(d) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of municipal courts as required by the ~~[supreme]~~ court of criminal appeals under Section 74.025 and of their court personnel.

(e) The ~~[supreme]~~ court of criminal appeals shall grant legal funds to statewide professional associations of judges and other entities whose purposes include providing continuing legal education courses, programs, and projects for judges and court personnel. The grantees of those funds



must ensure that sufficient funds are available for each judge to meet the minimum educational requirements set by the ~~[supreme]~~ court of criminal appeals under Section 74.025 before any funds are awarded to a judge for education that exceeds those requirements.

~~(f) The court of criminal appeals shall grant legal funds to statewide professional associations of prosecuting attorneys, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace whose purposes include providing continuing legal education, technical assistance, and other support programs.~~

SECTION 4. Section 56.004, Government Code, is amended to read as follows:

Sec. 56.004. ALLOCATION OF FUNDS. (a) The legislature shall appropriate funds from the judicial and court personnel training fund to the ~~[supreme]~~ court of criminal appeals to provide for the continuing legal education of judges and court personnel in this state.

~~(b) The legislature shall appropriate funds from the judicial and court personnel training fund to the court of criminal appeals to provide for continuing legal education, technical assistance, and other support programs for prosecuting attorneys and their personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace and their court personnel.~~

SECTION 5. Section 56.005, Government Code, is amended to read as follows:

Sec. 56.005. JUDICIAL EDUCATION COMMITTEES. (a) The ~~[supreme]~~ court of criminal appeals shall appoint the ~~[supreme]~~ court of criminal appeals education committee to recommend educational requirements and course content, credit, and standards for judges and court personnel of appellate courts, district courts, statutory county courts, and county courts performing judicial functions. The ~~[supreme]~~ court of criminal appeals shall appoint at least two appellate judges, four district court judges, two statutory county court judges, and one judge of a county court performing judicial functions. The ~~[supreme]~~ court of criminal appeals may appoint not more than six additional members. Members serve at the will of the ~~[supreme]~~ court of criminal appeals.

(b) An entity receiving a grant of funds from the ~~[supreme]~~ court of criminal appeals for the education of justices of the peace and their court personnel shall designate a committee to recommend educational requirements and course content, credit, and standards for the purposes of the grant awarded.

(c) An entity receiving a grant of funds from the ~~[supreme]~~ court of criminal appeals under this chapter for the education of municipal court judges and their personnel shall designate a committee to recommend educational requirements and course content, credit, and standards for the purposes of the grant awarded.

(d) The ~~[supreme]~~ court of criminal appeals education committee and any committee established as provided by Subsection (b) or (c) shall meet at least twice a year to:

(1) review and recommend course content, credit, and standards for initial and continuing judicial education for judges and court personnel; and

(2) make recommendations and take other action necessary to carry out the purposes of this chapter.

(e) The ~~[supreme]~~ court of criminal appeals education committee and any committee established as provided by Subsection (b) or (c) shall:

(1) recommend to the ~~[supreme]~~ court of criminal appeals the minimum educational requirements for judges and court personnel; and

(2) issue an annual report to the ~~[supreme]~~ court of criminal appeals that lists the courses, credits, and standards for the judges and court personnel.

SECTION 6. Chapter 56, Government Code, is amended by adding Sections 56.006 and 56.007 to read as follows:

Sec. 56.006. RULES. The court of criminal appeals may adopt rules for programs relating to education and training for attorneys, judges, court personnel, and justices of the peace as provided by Section 56.003.

Sec. 56.007. ADMINISTRATIVE EXPENSES. An entity receiving a grant of funds from the court of criminal appeals under this chapter for continuing legal education, technical assistance, and other support programs may not use grant funds to pay any costs of the entity not related to approved grant activities.

SECTION 7. Section 74.025, Government Code, is amended to read as follows:

Sec. 74.025. EDUCATION PROGRAMS. The ~~[supreme]~~ court of criminal appeals shall, if adequate funding is available for education programs for judges and court personnel, ensure that adequate education programs are available on an equitable basis for judges and court personnel of ~~[a]~~ courts created under the constitution and laws of this state.

SECTION 8. All funds appropriated to the Supreme Court of Texas in S.B. 5, Acts of the 73rd Legislature, Regular Session, 1993, on page IV-15 in line item 2., Judicial and Court Personnel Training, and on page IV-17 in rider provision 5., Appropriation, Judicial Education, are transferred to the court of criminal appeals for the same period and for the same purposes as indicated in that Act.

SECTION 9. All rider provisions in Article IV, S.B. 5, Acts of the 73rd Legislature, Regular Session, 1993, limiting, controlling, or otherwise affecting the appropriations transferred under Section 8 of this Act continue to apply to those appropriations, and a reference to the Supreme Court of Texas in those provisions is considered a reference to the court of criminal appeals.

SECTION 10. Section 5., Contingency Appropriation, Judicial Education, on page IV-28 in Special Provisions—Judiciary of S.B. 5, Acts of the 73rd Legislature, Regular Session, 1993, has no effect.

SECTION 11. This Act takes effect September 1, 1993.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2055**

Senator Parker submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2055** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PARKER  
ELLIS  
HALEY  
HARRIS OF TARRANT  
TRUAN

On the part of the Senate

MARTIN  
COUNTS  
McCALL  
GRAY

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 458**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 458** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

MADLA  
RATLIFF  
LUCIO  
MONCRIEF  
LUNA

On the part of the Senate

PUENTE  
JOHNSON  
BLACK  
MARTIN  
MARCHANT

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1077**

Senator Harris of Dallas submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 1077 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HARRIS OF DALLAS  
WENTWORTH  
ELLIS  
PARKER  
MADLA

CAIN  
COLEMAN  
DELISI  
MAXEY

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the regulation of speech-language pathology and audiology and the continuation of the State Committee of Examiners for Speech Pathology and Audiology.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. In this Act:

(1) "Board" means the State [Texas] Board of Examiners for Speech-Language Pathology and Audiology [Health].

(2) ~~["Committee" means the State Committee of Examiners for Speech-Language Pathology and Audiology.~~

~~[(3)]~~ "Department" means the Texas Department of Health.

~~(3) [(4)]~~ "Person" means an individual, corporation, partnership, or other legal entity.

~~(4) [(5)]~~ "Speech-language pathologist" means an individual who practices speech-language pathology, who makes a nonmedical evaluation, who examines, counsels, or provides habilitative or rehabilitative services for persons who have or are suspected of having speech, voice, or language disorders, and who meets the qualifications of [set forth in] this Act.

(5) [(6)] "The practice of speech-language pathology" means the application of nonmedical principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, [or] language, oral pharyngeal function, or cognitive processes, for the purpose of rendering or offering to render an evaluation, prevention, or modification of these disorders and conditions in individuals or groups of individuals. Speech-language pathologists may perform [the] basic audiometric screening tests and aural rehabilitation or habilitation ~~[hearing therapy procedures consistent with their training]~~.

(6) [(7)] "Audiologist" means a person who practices audiology, who makes a nonmedical evaluation, who examines, counsels, or provides rehabilitative or rehabilitative services for persons who have or are suspected of having a hearing or vestibular disorder, and who meets the qualifications of ~~[set forth in]~~ this Act.

(7) [(8)] "The practice of audiology" means the application of nonmedical principles, methods, and procedures for the measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to ~~[hearing and]~~ disorders of the auditory or vestibular systems ~~[hearing and]~~ for the purpose of rendering or offering to render services modifying communicative disorders involving speech, language, auditory or vestibular function, or other aberrant behavior relating to hearing loss. An audiologist may engage in any tasks, procedures, acts, or practices that are necessary (A) for the evaluation of hearing; (B) for training in the use of amplification including hearing aids; ~~[or]~~ (C) for the making of earmolds for hearing aids; (D) for the fitting, dispensing, and sale of hearing aids; or (E) for the management of cerumen. An audiologist may participate in consultation regarding noise control and hearing conservation, may provide evaluations of environment or equipment including calibration of equipment used in testing auditory functioning and hearing conservation, and may perform the basic speech and language screening tests and procedures consistent with his or her training.

(8) "Licensed assistant in speech-language [(9) "Speech-language pathology ~~[aide]~~" means a person who meets minimum qualifications which the board ~~[committee]~~ may establish for licensed assistants ~~[speech-language pathology aides]~~ and who works under the direction of a licensed speech-language pathologist. The qualifications for licensure as a licensed assistant in speech-language pathology ~~[aide]~~ shall be uniform and shall be less than those established by this Act as necessary for licensure as a speech-language pathologist.

(9) "Licensed assistant in audiology" [(10) "Audiology aide"] means a person who meets minimum qualifications which the board ~~[committee]~~ may establish for licensed assistants ~~[audiology aides]~~ and who works under the direction of a licensed audiologist. The qualifications for licensure as a licensed assistant in ~~[an]~~ audiology ~~[aide]~~ shall be uniform and shall be less than those established by this Act as necessary for licensure as an audiologist.

SECTION 2. Section 3, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. BOARD [~~Committee~~]; MEMBERSHIP. (a) The State Board [~~Committee~~] of Examiners for Speech Pathology and Audiology is created within the Texas Department of Health. The board [~~committee~~] consists of nine members appointed by the governor [~~to take office on the effective date of this Act~~]. Members of the board [~~committee~~] must have been residents of the State of Texas for two years immediately preceding appointment and must be representative of varying geographic regions of the state and from varying employment settings. Six members must have been engaged in rendering services, teaching, or research in speech-language pathology or audiology for at least five years and must meet the qualifications for full licensure under this Act. Of these six members, three members shall be audiologists, three members shall be speech-language pathologists. ~~All [Except for the initial appointees, all]~~ six shall hold valid licenses under this Act. Three members shall be selected from the general public. One of the three public members of the board [~~committee~~] must be a physician licensed to practice in the State of Texas and board certified in otolaryngology or pediatrics. The two remaining public members may not:

(1) be licensed by an occupational regulatory agency in the field of health care;

(2) be employed by and participating in the management of an agency or business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment;

(3) own, control, or have a direct or indirect interest in more than 10 percent of a business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(4) be an officer, employee, or paid consultant of a trade association in the field of health care. A member of the board [~~committee~~] may not be related within the second degree of affinity or consanguinity, as determined under Article 5996b, Revised Statutes, to a person who is an officer, employee, or a paid consultant of a trade association in the health-care field.

(b) An appointment to the board [~~committee~~] shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

(c) A person who is required to register as a lobbyist under Chapter 305, Government Code, in a health-related area may not serve as a member of the board or act as the general counsel to the board.

(d) Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.

SECTION 3. Section 4, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. TERMS; OFFICERS; QUORUM; EXPENSES. (a) Members [~~The term of initial appointees to the board shall be determined by lot as follows: three members are appointed for terms which expire August 31,~~

~~1985; three members are appointed for terms which expire August 31, 1987; and three members are appointed for terms which expire August 31, 1989. After the initial appointments, members]~~ are appointed for staggered terms of six years, with three terms beginning September 1 of each odd-numbered year. Members of the board ~~[committee]~~ shall serve until the expiration of the term to which they have been appointed or until their successors have qualified. A person may not be appointed to serve more than two consecutive terms.

(b) The board ~~[committee]~~ shall be organized annually and select a chairperson, vice-chairperson, and a secretary-treasurer. The ~~[initial chairperson shall be a person who meets the qualifications for licensing under this Act. After September 1, 1984, the]~~ chairperson shall hold a valid license under this Act.

(c) Five members of the board ~~[committee]~~ constitute a quorum to do business.

(d) The board ~~[committee]~~ shall hold at least two regular meetings each year ~~[at which time an examination as defined in Section 12 of this Act shall be offered]~~. Additional meetings may be held on the call of the chairperson or at the written request of any three members of the board ~~[committee]~~. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments. [At least 14 days' advance notice of the committee meeting is required.]

(e) Board ~~[Committee]~~ members receive no compensation for their services; however, each member of the board ~~[committee]~~ is entitled to a per diem and travel allowance at the rate set by the legislature for state employees in the General Appropriations Act for each day that the member engages in the business of the board ~~[committee]~~.

SECTION 4. Section 5, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. DUTIES AND POWERS OF THE BOARD ~~[COMMITTEE]~~.

(a) ~~The board [Subject to the approval of the board, the committee]~~ shall adopt rules necessary to administer and enforce this Act, including rules that establish standards of ethical practice.

(b) With the assistance of the department, the board ~~[committee]~~ shall administer, coordinate, and enforce the provisions of this Act; evaluate the qualifications of applicants; provide for the examination of applicants; and issue subpoenas, examine witnesses, and administer oaths under the laws of the State of Texas.

(c) With the assistance of the department and in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), the board ~~[committee]~~ shall conduct hearings and keep records and minutes necessary to the orderly administration of this Act.

(d) The board ~~[committee]~~ with the aid of the department shall investigate persons engaging in practices that violate the provisions of this Act.

(e) A person who holds a license to practice speech-language pathology or audiology in this state is governed and controlled by the rules adopted by the ~~[committee and approved by the]~~ board ~~[of health]~~.

(f) The conferral or enumeration of specific powers elsewhere in this Act shall not be construed as a limitation of the general powers conferred by this section.

(g) The board ~~[committee]~~ shall be represented by the attorney general and the district and county attorneys of this state.

(h) The board ~~[committee]~~ may appoint subcommittees to work under its jurisdiction~~[, subject to the approval of the board]~~.

(i) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(j) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

(k) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

SECTION 5. Section 6, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. EMPLOYEES OF THE BOARD ~~[Committee]~~. The Texas Department of Health shall provide such administrative and clerical employees as are necessary to carry out the provisions of this Act.

SECTION 6. Section 7, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. SEAL AND AUTHENTICATION OF RECORDS. The board ~~[committee]~~ shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records, and acts of the board ~~[committee]~~ and certificates purporting to relate the facts concerning the proceedings, records, and acts, signed by the secretary-treasurer and authenticated by the seal, are prima facie evidence in all courts of this state.

SECTION 7. Subsections (a) and (b), Section 8, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Licenses shall be granted either in speech-language pathology or audiology independently. Persons may be licensed in both areas if they meet the qualifications. The board by rule shall establish qualifications for dual licensure in speech-language pathology and audiology and may develop a full range of licensing options and establish rules for qualifications as necessary.

(b) A person may not practice or represent himself or herself as a speech-language pathologist or audiologist in this state ~~[after August 31, 1984,]~~ unless he or she is licensed in accordance with the provisions of this Act.



SECTION 8. Subsections (b) through (p), Section 9, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) This Act does not prevent or restrict the activities and services and the use of an official title by persons holding a valid and current certification in speech-language pathology ~~[speech and hearing therapy]~~ from the Central Education Agency if those persons perform speech-language pathology or audiology services solely as a part of their duties within an agency, institution, or organization under the jurisdiction of the Central Education Agency. Effective September 1, 1994, the Central Education Agency certificate in speech-language pathology shall require the new applicant to hold a master's degree in communicative disorders or the equivalent from a university program accredited by the American Speech-Language-Hearing Association and to pass a national examination in speech-language pathology or audiology approved by the board. If persons affected by this subsection perform work as a speech-language pathologist or audiologist apart from their positions within an agency, institution, or organization of the Central Education Agency, they must have a license issued by the board ~~[committee]~~, except that a person affected by this subsection may perform speech and hearing screening procedures without compensation without having a license issued by the board ~~[committee]~~. In this subsection, "equivalent" means graduate level course work and practicum from a program accredited by the American Speech-Language-Hearing Association. Course work and practicum requirements are the same as those established by the board for a license in speech-language pathology or audiology. The clinical fellowship year experience or internship may not be a requirement for the Central Education Agency certificate in speech-language pathology.

(c) This Act does not restrict the activities and services of students ~~[or interns]~~ pursuing a course of study leading to a degree in speech-language pathology at a college or university accredited by the Southern Association of Colleges and Universities or its equivalent, provided that these activities and services constitute a part of their supervised course of study and ~~[or internship year; that after September 1, 1984;]~~ they are supervised by a person licensed under this Act,<sup>(5)</sup> and that they are designated by a title such as ~~["Speech-Language Pathology Intern" or "Speech-Language Pathology Trainee"]~~ or other title clearly indicating their professional preparation ~~[the training]~~ status ~~[appropriate to their level of training]~~.

(d) This Act does not restrict activities and services of students ~~[or interns]~~ in audiology pursuing a course of study leading to a degree in audiology at a college or university accredited by the Southern Association of Colleges and Universities or its equivalent, provided that these activities and services constitute a part of their supervised course of study. ~~[or internship year; that after September 1, 1984;]~~ they are supervised by a person licensed under this Act,<sup>(7)</sup> and that they are designated by a title such as ~~["Audiology Intern" or "Audiology Trainee"]~~ or other title clearly indicating their professional preparation ~~[the training]~~ status ~~[appropriate to their level of training]~~. A student of audiology in an accredited college or university program is exempt from Chapter 366, Acts of the 61st

Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments, if the student's activities and services constitute a part of the student's supervised course of study or practicum experience.

(e) ~~[This Act does not restrict the performance of speech-language pathology or audiology services in this state by a person not a resident of this state who is not licensed under this Act, if the services are performed for no more than five days in a calendar year and if the person meets the qualifications and requirements for application for licensure under this Act.~~

~~[(f)]~~ This Act does not restrict the use of an official title by an individual teaching in a university or college training program, provided that the person is not engaged in the practice of speech-language pathology or audiology and does not supervise persons engaged in the practice of speech-language pathology or audiology.

(f) ~~[(g)]~~ This Act does not permit a person to perform an act that would be in violation of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). ~~[This Act does not permit a person to provide medical or surgical diagnosis or treatment of laryngeal or ear disorders.]~~

(g) ~~[(h)]~~ Nothing in this Act shall be construed as restricting or preventing a physician or surgeon from engaging in the practice of medicine in this state. This Act does not restrict speech or hearing testing or evaluation personally conducted by a licensed physician or surgeon.

(h) ~~[(i)]~~ This Act does not apply to persons employed by the Texas Department of Health in its programs concerned with hearing or speech services as long as they are performing duties under the jurisdiction of the Texas Department of Health.

~~[(j)]~~ This Act does not apply to a person who shows evidence of having received training by the Texas Department of Health in one of the communication, speech, language, or hearing screening training programs approved by that agency, provided that all activities performed under this exception shall be limited to screening as defined by board rule ~~[of hearing sensitivity].~~ An individual who has received training by the department in one of the communication, speech, language, or hearing screening training programs approved by the department may not practice speech-language pathology or audiology or represent the individual as a speech-language pathologist or audiologist.

(i) ~~[(k)]~~ This Act does not license a person to sell hearing aids as defined in Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes).

~~[(l)]~~ This Act does not prevent or restrict a person licensed under Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments, ~~[by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids]~~ from engaging in the practice of fitting and dispensing hearing aids. This Act does not prohibit a fitter and dispenser of hearing aids licensed under Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments, from measuring human hearing

using an audiometer or by any means to make a selection, adaptation, or sale of a hearing aid, including making impressions for earmolds to be used as part of a hearing aid, and any post-fitting counseling to fit and dispense hearing aids. A person who is not an audiologist who is licensed to fit and dispense hearing aids under Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments, may not practice speech-language pathology or audiology or represent the person as a speech-language pathologist or audiologist or by any other term restricted by this Act.

(j) ~~[(m)]~~ This Act does not prevent persons in an industrial setting from engaging in hearing testing as a part of a hearing conservation program in compliance with regulations of the Occupational Safety and Health Administration, provided that such persons are certified by an agency acceptable to the Occupational Safety and Health Administration.

(k) ~~[(n)]~~ This Act does not prevent or restrict communication, speech, language, or hearing screenings as defined by board rule ~~[sensitivity screening evaluations]~~ conducted by registered nurses licensed by the laws of this state and practicing in accordance with the standards of professional conduct and ethics promulgated by the rules and regulations of the Board of Nurse Examiners.

~~[(o) This Act does not prevent the use of the title "Certified Hearing Aid Audiologist" by a person so certified by the National Hearing Aid Association if the person is a licensed hearing aid dispenser and uses the title solely in connection with fitting and dispensing hearing aids and does not represent himself to be a licensed audiologist under this Act.~~

~~[(p) Nothing in this Act shall be construed as restricting or preventing a licensed psychologist from engaging in the practice of psychology within the scope of the activities permitted under that license.]~~

SECTION 9. Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. FITTING AND DISPENSING OF HEARING AIDS BY PERSONS REGULATED UNDER THIS ACT. (a) A person licensed as a speech-language pathologist under this Act may not fit, dispense, or sell hearing aids unless the person meets the specific requirements for fitting and dispensing hearing aids under this Act or Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) A person who meets the requirements of this Act for licensure as an audiologist or audiologist intern who fits and dispenses hearing aids must:

(1) register with the board the person's intent to fit and dispense hearing aids;

(2) adhere to the profession's code of ethics;

(3) comply with the federal Food and Drug Administration guidelines required for fitting and dispensing hearing aids;

(4) provide a written contract for services in this state that contains the name, mailing address, and telephone number of the board; and

(5) follow the guidelines adopted by board rule for a 30-day trial period on every hearing aid purchased.

(c) If audiometric testing is not conducted in a stationary acoustical enclosure, sound level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most recent American National Standards Institute "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing. A dBa equivalent level may be used to determine compliance. The board shall adopt rules necessary to enforce this subsection.

(d) A licensed hearing aid fitter and dispenser or licensed audiologist may not sell a hearing aid to a person under 18 years of age unless the prospective user, parent, or guardian presents the hearing aid fitter and dispenser or audiologist with a written statement signed by a licensed physician who specializes in diseases of the ear that states that the prospective user's hearing loss has been medically evaluated during the six-month period preceding the date the statement is presented and that the prospective user may be considered a candidate for a hearing instrument.

SECTION 10. Section 10, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. QUALIFICATION OF APPLICANTS FOR LICENSE; INTERN LICENSE. (a) To be eligible for licensing as a speech-language pathologist or audiologist, an applicant must:

(1) possess a minimum of [at least] a master's degree with a major in not less than one of the areas of communicative sciences or disorders from a program accredited by the American Speech-Language-Hearing Association in [speech-language pathology or audiology from] an accredited or approved college or university;

(2) submit transcripts from one or more colleges or universities showing successful completion of course work in amounts set by the [committee with the approval of the] board in the following areas:

(A) information about normal development and use of speech, language, and hearing;

(B) information about evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and

(C) information pertaining to related fields that augment the work of clinical practitioners of speech-language pathology and audiology;

(3) have successfully completed at least 36 [30] semester hours in courses that are acceptable toward a graduate degree by the college or university in which they are taken, at least 24 [21] of which are within the professional area for which the license is requested and at least six of which are in audiology for the applicant for a license in speech-language pathology [license] or not less than six of which are in speech-language pathology for the applicant for a license in audiology;

(4) have completed the [a] minimum number of [300-clock] hours established by the board of supervised clinical experience with individuals who present a variety of communication disorders. This[, and this]

experience must have been obtained within his or her educational ~~[training]~~ institution or in one of its cooperating programs and under the supervision of a person holding a valid license to practice speech-language pathology or audiology~~]; provided during the first year of this Act, the supervision may be under a person who would have met the qualifications for a license under this Act~~]; and

(5) have obtained ~~[the equivalent of nine months of]~~ full-time supervised professional experience as defined by board rule in which bona fide clinical work has been accomplished in the major professional area for which the license is being sought, under the supervision of a qualified person acceptable to the board ~~[committee]~~ pursuant to guidelines approved by the board. The supervised professional ~~[which]~~ experience must have begun after completion of the academic and clinical experience required by this section.

(b) An applicant who has completed the requirements of Subsections (a)(1) through (4) of this section may only be licensed as an intern under this Act. An applicant who has successfully completed all academic and clinical requirements of Subsections (a)(1) through (4) of this section but who has not had the degree officially conferred on the applicant may be licensed as an intern under this Act. The board by rule shall prescribe the terms by which an applicant may practice under an intern's license under this subsection. The board by rule shall establish general guidelines and renewal procedures for the holder of an intern license. An audiology intern is exempt from Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments.

SECTION 11. Section 11, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. APPLICATION FOR LICENSE. Each person desiring a license under this Act shall make application to the board ~~[committee]~~ on a form and in the manner the board ~~[committee]~~ prescribes. The application shall be accompanied by the application fee which may not be refunded by the board ~~[committee]~~.

SECTION 12. Section 12, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. EXAMINATION. (a) Each applicant shall pass a validated examination approved ~~[be examined]~~ by the board ~~[committee]~~ and shall pay fees in a manner prescribed by the board ~~[to the committee, at least 30 days prior to the date of examination, a nonrefundable examination fee prescribed by the committee]~~. The examination shall be administered ~~[given]~~ at least twice each year ~~[at a time and place established by and under the supervision of the committee]~~.

(b) The board by rule may establish procedures for the administration of the examination. The board by rule ~~[committee]~~ may require a ~~[examine by]~~ written or oral examination or ~~[by]~~ both. The board ~~[committee]~~ shall maintain a record of all examination scores for at least two years after the date of examination.

(c) Standards for acceptable performance shall be determined by the ~~board~~ committee.

(d) The ~~board~~ committee may examine in whatever theoretical or applied fields of speech-language pathology or audiology it deems appropriate. It may examine the candidates with regard to their professional skills and their judgment in the utilization of speech-language pathology or audiology techniques or methods.

(e) Persons who fail the examination may be examined at a subsequent time if they pay another nonrefundable examination fee. No applicant who has taken and failed to pass two examinations may take the examination until the person has submitted a new application together with a nonrefundable application fee and presented evidence acceptable to the ~~board~~ committee of additional study in the area for which licensure is sought. A person who fails a licensing examination administered under this Act shall contact the testing service administering the examination to request an analysis of the person's performance on the examination.

(f) Not later than the 30th day after the date on which a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national or state testing service and the testing service does not directly notify examinees of the results of the examination, the board shall notify examinees of the results of the examination not later than the 14th day after the date on which the board receives the results from the testing service. If the notice of examination results graded or reviewed by a national or state testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day. [The committee may waive the examination for applicants who:

[(1) present proof of current licensure in another state, including the District of Columbia, or territory of the United States which maintains professional standards considered by the committee to be equivalent to those set forth in this Act; or

[(2) hold the Certificate of Clinical Competence of the American Speech-Language Hearing Association in the area for which a license is being sought.]

SECTION 13. Section 13, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. LICENSING UNDER SPECIAL CONDITIONS. (a) ~~[The committee on request must waive educational, professional experience, and examination requirements for licensure in speech-language pathology for applicants who hold a baccalaureate or graduate degree, are fully certified by the Central Education Agency in speech and hearing therapy or in the judgment of the committee have met equivalent requirements, and within two years prior to the effective date of this Act were engaged in the practice of speech pathology on proof of bona fide practice of speech pathology, presented to the committee in the manner prescribed by the committee's rules, provided they file an application for licensure with the committee or the board of health before January 1, 1986. Such licenses~~

shall be issued without delay and shall be renewed in the same manner as licenses granted under other provisions of this Act.

~~[(b) The committee on request shall waive educational and professional experience requirements for a license in audiology for an applicant who, on the effective date of this Act, holds a graduate degree from an accredited institution of higher education with a major in speech-language pathology or audiology, and has been continuously engaged in the practice of audiology for ten years immediately preceding the effective date of this Act, provided the applicant files an application for licensure with the committee on or before January 1, 1986. Such an applicant must pass the licensing examination under Section 12 of this Act not later than August 31, 1986.]~~

~~[(c)]~~ The board [committee] may [waive the examination and] grant a provisional license [licensure] to an applicant who:

~~(1) possesses a license in good standing as a speech-language pathologist or an audiologist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;~~

~~(2) has passed a national or other examination relating to speech-language pathology or audiology that is recognized by the board; and~~

~~(3) is sponsored by a person licensed by the board under this Act with whom the provisional license holder may practice under this section [presents proof of current licensure in another state, including the District of Columbia, or territory of the United States which maintains professional standards considered by the committee to be equivalent to those set forth in this Act].~~

~~(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.~~

~~(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this Act to the holder of a provisional license under this section if:~~

~~(1) the provisional license holder passes the examination required by Section 12 of this Act;~~

~~(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this Act; and~~

~~(3) the provisional license holder satisfies any other license requirements under this Act.~~

~~(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.~~

~~[(e) [(d)]~~ The board [committee] may waive the examination and grant licensure to an applicant who holds the Certificate of Clinical Competence of the American Speech-Language Hearing Association [or has met equivalent requirements in the area for which a license is sought].

SECTION 14. Subsections (a), (c), and (d), Section 14, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The board ~~[committee]~~ shall issue a license to an applicant who meets the requirements of this Act and who pays to the board ~~[committee]~~ the initial nonrefundable license fee.

(c) On receiving an application provided for under Subsection (b) of this section accompanied by the nonrefundable application fee, the board ~~[committee]~~ shall issue a temporary certificate of registration which entitles the applicant to practice audiology or speech-language pathology for a period ending eight weeks after the conclusion of the next examination given after the date of issue.

(d) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable ~~[All licenses expire and become invalid one year from the date of issuance if not renewed].~~

SECTION 15. Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended by adding Section 14A to read as follows:

Sec. 14A. TEMPORARY LICENSE: INACTIVE STATUS. (a) The board by rule may provide for the issuance of a temporary license.

(b) The board by rule may provide for a person who holds a license under this Act to be placed on inactive status. Rules adopted under this section shall include a time limit for a license holder to remain on inactive status.

SECTION 16. Subsections (a), (c), and (d), Section 15, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Each licensed speech-language pathologist or audiologist shall annually pay the nonrefundable renewal fee for a renewal of his license. A 60-day grace period shall be allowed. After expiration of the grace period, the board ~~[committee]~~ may renew each license after payment of a penalty set by the rules. No person who applies for renewal within two years after the date of expiration of the license may be required to submit to an examination as a condition to renewal. An application for a license filed not later than the second anniversary of the expiration date of the person's license is considered an application for renewal.

(c) Renewal ~~[Within three years of the effective date of this Act, renewal]~~ of a license is contingent on the applicant's meeting uniform mandatory continuing education requirements that shall be established by the board ~~[committee]~~. These continuing education requirements must be of such a nature that they can be met without necessitating an extended absence from the licensee's county of residence. ~~[Notice of continuing education requirements shall be sent to all persons licensed under this Act at least 12 months prior to the time that the person's license renewal is dependent on completion of the requirements.]~~ Continuing education requirements shall be sent to new applicants with the forms on which they



are to apply for licensure. Notification or changes in continuing education requirements shall be sent to persons licensed under this Act at least one year prior to the date on which the new requirements become effective.

(d) ~~If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who within the last three years was licensed in this state and is currently licensed and has been in practice in another state for the two years preceding application. An applicant who was licensed in this state but whose license has been expired for more than three years may reapply for a license by meeting the current licensing requirements. The board may adopt rules concerning the reinstatement of a license in a case of medical hardship. To renew an expired license the person must pay to the board a fee that is equal to the examination fee for the license. [A suspended license is subject to expiration and may be renewed as provided in this Act, but the renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in any other activity or conduct in violation of the order or judgment by which the license was suspended. A license revoked on disciplinary grounds is subject to expiration as provided in this Act, but it may not be renewed. If it is reinstated after its expiration, the licensee as a condition of reinstatement shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of the license revocation.]~~

SECTION 17. Section 16, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. FEES. ~~[The amount of fees initially prescribed in connection with a license as a speech-language pathologist or audiologist may not exceed the following:~~

<del>[(1) application fee</del>	<del>\$75</del>
<del>[(2) examination fee:</del>	<del>\$50</del>
<del>[(3) initial license fee:</del>	<del>\$75</del>
<del>[(4) license renewal fee:</del>	<del>\$75</del>
<del>[(5) delinquency fee:</del>	<del>\$50</del>
<del>[(6) temporary license fee:</del>	<del>\$25</del>
<del>[(7) duplicate license fee:</del>	<del>\$10]</del>

The board [committee] by rule shall establish reasonable and necessary fees. ~~The[, and such] fees set by the board shall be adjusted so that the total fees collected, in the aggregate, shall be sufficient to meet the expenses of administering this Act [and so that unnecessary surpluses in the fund provided for in Section 20 of this Act are avoided].~~

SECTION 18. Section 17, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. DENIAL, SUSPENSION, AND REVOCATION. (a) The board [committee] may refuse to issue a license to an applicant or may suspend or revoke the license of any licensee for any of the following causes:

(1) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) selling, bartering, or offering to sell or barter a license or certificate of registration;

(3) unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public as defined by the rules established by the board [committee] or violation of the code of ethics adopted and published by the board [committee];

(4) violating any lawful order or rule rendered or adopted by the board [committee]; or

(5) violating any provisions of this Act.

(b) The board [committee] shall deny an application for or suspend or revoke or impose probationary conditions on a license as ordered by the board [committee] in any decision made after hearing as provided in this Act. One year from the date of revocation of a license under this Act, application may be made to the board [committee] for reinstatement. The board [committee] shall have discretion to accept or reject an application for reinstatement and may require an examination for the reinstatement.

(c) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of an offense involving moral turpitude is deemed to be a conviction within the meaning of this Act. At the direction of the board [committee] the license may be suspended or revoked or the board [committee] may decline to issue a license when the time for appeal of the conviction has elapsed or the judgment or conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order allowing a person to withdraw his or her plea of guilty, or setting aside the verdict of guilty, or dismissing the information or indictment.

(d) In addition to the other disciplinary actions authorized by this section, the board may issue a written reprimand to a license holder who violates this Act or require that a license holder who violates this Act attend continuing education programs. The board may specify the number of hours that must be completed by an individual license holder to fulfill the requirements of this subsection.

(e) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(f) The schedule of sanctions adopted by the board by rule shall be used for any sanction imposed as the result of a hearing conducted by the board.

SECTION 19. Subsection (b), Section 18, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a person other than a licensed speech-language pathologist or audiologist has engaged in any act or practice which constitutes an offense under this Act, a district court of any county on application of the board ~~[committee]~~ may issue an injunction or other appropriate order restraining such conduct.

SECTION 20. Section 19, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. PROCEDURES FOR DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE. (a) A person whose application for a license is denied is entitled to a hearing before the board ~~[committee]~~ if such person submits a written request to the board ~~[committee]~~.

(b) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the board ~~[committee]~~ in writing and under oath. The charges may be made by any person or persons.

~~(c) [The chairperson of the committee shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a license, together with a notice of the time and place fixed for the hearing, to be served on the applicant requesting the hearing or the licensee against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges and notice of hearing may be given by certified mail to the last known address of the licensee or applicant.]~~

~~[(d) At the hearing the applicant or licensee has the right to appear either personally or by counsel or both, to produce witnesses, to have subpoenas issued by the committee, and to cross-examine opposing or adverse witnesses.]~~

~~[(e) The committee shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law and the action taken. A copy of the order of the committee shall be mailed to the applicant or licensee at his or her last known address by certified mail.]~~

~~[(f) An individual whose application for a license has been refused or whose license has been cancelled, revoked, or suspended by the committee may take an appeal, within 20 days after the order is entered, to any district court of Travis County or to any district court of the county of his or her residence.]~~

~~[(g) In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts in Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act.]~~

~~[(h)] All proceedings under this Act shall conform to the requirements of the Administrative Procedure and Texas Register Act, as amended~~

(Article ~~6252-13a~~ ~~[6252-13g]~~, Vernon's Texas Civil Statutes), except as modified by this section.

SECTION 21. Section 20, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. DISPOSITION OF FUNDS RECEIVED. (a) All funds received by the ~~board~~ ~~[committee]~~ under this Act shall be deposited in accordance with applicable state law in the State Treasury in a separate fund to be known as the speech-language pathology and audiology fund and be appropriated to the ~~board~~ ~~[Texas Department of Health]~~ solely for administration of this Act.

(b) ~~All~~ ~~[After August 31, 1984, all]~~ expenses for the administration of the Act shall be paid from fees collected by the ~~board~~ ~~[committee]~~ under this Act.

~~[(c) There is hereby appropriated \$80,000 to the speech-language pathology and audiology fund for the implementation of this Act, said funds coming from the General Revenue Fund for the first year provided that the first \$80,000 of application and license fees shall be returned to the General Revenue Fund as they are received.]~~

SECTION 22. Section 22, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. SUNSET PROVISION. The State ~~Board~~ ~~[Committee]~~ of Examiners for Speech-Language Pathology and Audiology is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the ~~board~~ ~~[committee]~~ is abolished and this Act expires September 1, ~~2005~~ ~~[1993]~~.

SECTION 23. Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended by adding Section 23 to read as follows:

Sec. 23. COMPLAINT PROCEDURE IN GENERAL. (a) The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
- (4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

SECTION 24. Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended by adding Sections 24 and 25 to read as follows:

Sec. 24. COMPLAINT INVESTIGATION AND DISPOSITION.

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The director of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Sec. 25. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must:

(1) provide the complainant, if applicable and permitted by law, an opportunity to be heard;

(2) provide the licensee an opportunity to be heard; and

(3) require the presence of an attorney to advise the board or board's employees.

(c) The attorney under Subsection (b)(3) of this section must be either a legal representative of the department who represents the board or the board's employees or a representative of the office of the attorney general.

SECTION 25. Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is amended by adding Section 26 to read as follows:

Sec. 26. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring license holders' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

SECTION 26. Section 21, Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is repealed.

SECTION 27. This Act takes effect September 1, 1993.

SECTION 28. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1626

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1626** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI  
MADLA  
TRUAN  
NELSON  
On the part of the Senate

COLEMAN  
ROMO  
NIETO  
VAN DE PUTTE  
On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 226**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 226 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST  
MADLA  
SHAPIRO

DUTTON  
GOODMAN  
ROMO  
D. JONES

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the competitive bidding requirements of governmental entities and certain duties of the Office of Small Business Assistance.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

SECTION 1. Section 252.021, Local Government Code, is amended to read as follows:

Sec. 252.021. **COMPETITIVE BIDDING AND COMPETITIVE PROPOSAL REQUIREMENTS.** (a) Before a municipality [~~with 50,000 or more inhabitants~~] may enter into a contract, other than a contract for insurance, that requires an expenditure of more than \$15,000 [~~\$10,000~~] from one or more municipal funds, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding or competitive sealed proposals.

(b) Before a municipality [~~with fewer than 50,000 inhabitants~~] may enter into a contract for insurance that requires an expenditure of more than \$5,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding or competitive sealed proposals.

(c) A municipality may use the competitive sealed proposal procedure only for high technology procurements.

SECTION 2. Section 271.024, Local Government Code, is amended to read as follows:

Sec. 271.024. COMPETITIVE BIDDING PROCEDURE APPLICABLE TO CONTRACT. If a governmental entity is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than ~~\$15,000~~ ~~[\$10,000]~~ from the funds of the entity, the bidding on the contract must be accomplished in the manner provided by this subchapter.

SECTION 3. Subchapter B, Chapter 252, Local Government Code, is amended by adding Section 252.0215 to read as follows:

Sec. 252.0215. COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS. A municipality, in making an expenditure of more than \$3,000 but less than \$15,000, shall contact at least two disadvantaged businesses on a rotating basis, based on information provided by the Office of Small Business Assistance of the Texas Department of Commerce pursuant to Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). If the list fails to identify a disadvantaged business in the county in which the city is situated, the city is exempt from this section.

SECTION 4. Subsection (a), Section 252.041, Local Government Code, is amended to read as follows:

(a) If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud ~~[contract will be let]~~ must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud ~~[let the contract]~~. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud ~~[let the contract]~~.

SECTION 5. Section 252.002, Local Government Code, is amended to read as follows:

Sec. 252.002. MUNICIPAL CHARTER CONTROLS IN CASE OF CONFLICT. Any provision in the charter of a home-rule municipality that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, ~~[or]~~ the manner of publicly opening bids or reading them aloud, or the manner of letting contracts and that is in conflict with this chapter controls over this chapter unless the municipality elects to have this chapter supersede the charter.

SECTION 6. Subsections (a) and (b), Section 271.055, Local Government Code, are amended to read as follows:

(a) An issuer must give notice of the time, date, and place at which the issuer will publicly open the bids on a contract ~~[let a contract]~~ for which competitive bidding is required by this subchapter and read the bids aloud. The notice must be given in accordance with Subsection (b) or in accordance with:

- (1) Chapter 252, if the issuer is a municipality;
- (2) the municipal charter of the issuer, if the issuer is a home-rule municipality; or



(3) the County Purchasing Act (Subchapter C, Chapter 262), if the issuer is a county.

(b) If an issuer gives notice under this subsection, the notice must:

(1) be published once a week for two consecutive weeks in a newspaper, as defined by Chapter 84, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 28a, Vernon's Texas Civil Statutes), that is of general circulation in the area of the issuer, with the date of the first publication to be before the 14th day before the date set for the public opening of the bids and the reading of the bids aloud ~~[receipt of bids]~~; and

(2) state that plans and specifications for the work to be done or specifications for the machinery, supplies, equipment, or materials to be purchased are on file with a designated official of the issuer and may be examined without charge.

SECTION 7. Subsection (a), Section 252.022, Local Government Code, is amended to read as follows:

(a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal or professional services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) electricity, gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212; ~~and~~

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; ~~and~~

~~(13) services performed by blind or severely disabled persons.~~

SECTION 8. Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The office shall provide a copy of the directory to every incorporated city twice annually, in January and July.

SECTION 9. The change in law made by this Act to Sections 252.021 and 271.024, Local Government Code, relating to the contractual amount that requires a municipality to solicit competitive bids or proposals, applies only to a contract for which the notice soliciting bids or proposals is first published or posted on or after September 1, 1993. A contract for which the notice is first published or posted before September 1, 1993, is subject to the law as it existed at the time the notice was first published or posted, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 1993.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1704

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1704** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI  
SIMS  
RATLIFF  
BARRIENTOS

On the part of the Senate

JOHNSON  
HIGHTOWER  
RABUCK  
B. TURNER  
PATTERSON

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2049**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2049** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS  
CARRIKER  
TRUAN  
LUCIO  
SHELLEY

On the part of the Senate

SAUNDERS  
EARLEY  
CHISUM  
LEWIS  
JACKSON

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 456**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 456** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS

SHAPIRO

WEST

MONCRIEF

WHITMIRE

On the part of the Senate

HOCHBERG

GREENBERG

PLACE

COLEMAN

McCALL

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the punishment of an offense motivated by bias or prejudice and to the conditions of community supervision or parole of persons convicted of that offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.47 to read as follows:

Sec. 12.47. PENALTY IF OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE. If the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, in the punishment phase of the trial of an offense other than a first degree felony, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense.

SECTION 2. Article 42.12, Code of Criminal Procedure, is amended by adding Section 13A to read as follows:

Sec. 13A. COMMUNITY SUPERVISION FOR OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE. (a) A court granting community supervision to a defendant convicted of an offense for which the court has made an affirmative finding under Article 42.014 of this code shall require as a term of community supervision that the defendant:

(1) serve a term of not more than one year imprisonment in the institutional division of the Texas Department of Criminal Justice if the offense is a felony other than an offense under Section 19.02, Penal Code; or

(2) serve a term of not more than 90 days confinement in jail if the offense is a misdemeanor.

(b) The court may not grant community supervision on its own motion or on the recommendation of the jury to a defendant convicted of an offense for which the court has made an affirmative finding under Article 42.014 of this code if:

(1) the offense is murder under Section 19.02, Penal Code; or

(2) the defendant has been previously convicted of an offense for which the court made an affirmative finding under Article 42.014 of this code.

SECTION 3. Section 16, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) If the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, the court may order the defendant to perform community service under this section at a project designated by the court that primarily serves the person or group who was the target of the defendant. If the court orders community service under this subsection the court shall order the defendant to perform not less than:

(1) 100 hours of service if the offense is a misdemeanor; or

(2) 300 hours of service if the offense is a felony.

SECTION 4. Article 42.01, Code of Criminal Procedure, is amended by adding Section 6 to read as follows:

Sec. 6. In addition to the information described by Section 1 of this article, the judgment should reflect affirmative findings entered pursuant to Article 42.014 of this code.

SECTION 5. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.014 to read as follows:

Art. 42.014. FINDING THAT OFFENSE WAS COMMITTED BECAUSE OF BIAS OR PREJUDICE. In the punishment phase of the trial of an offense under the Penal Code, if the court determines that the defendant intentionally selected the victim primarily because of the defendant's bias or prejudice against a person or a group, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of that case.

SECTION 6. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (o) to read as follows:

(o) In addition to other conditions imposed by a parole panel under this article, the parole panel shall require as a condition of parole or release to mandatory supervision that a prisoner for whom the court has made an affirmative finding under Article 42.014 of this code perform not less than 300 hours of community service at a project designated by the parole panel that primarily serves the person or group who was the target of the defendant.

SECTION 7. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 8. This Act takes effect September 1, 1993.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1630

Senator Harris of Tarrant submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1630** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS OF TARRANT	GOODMAN
HENDERSON	S. THOMPSON
SIBLEY	HARTNETT
SHAPIRO	COOK
PARKER	SCHECHTER
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1181**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1181** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BARRIENTOS	MARCHANT
HALEY	GUTIERREZ
WEST	McCOULSKEY
HENDERSON	PATTERSON
ARMBRISTER	BLACK
On the part of the Senate	On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the powers and duties of and systems and programs under the Employees Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 803.202, Government Code, is amended to read as follows:

Sec. 803.202. SERVICE IN CERTAIN RETIREMENT SYSTEMS.

(a) The board of trustees of the Employees Retirement System of Texas by rule may:

(1) consider the classes of service in the Employees Retirement System of Texas as if they were, for purposes of this chapter, classes in separate statewide retirement systems; or

(2) permit a person who is retiring exclusively from retirement systems administered by the board to use the shortest length-of-service requirement provided for retirement in any class in which the person has service credit.

(b) A member of a retirement system administered by the board of trustees of the Employees Retirement System of Texas may reestablish service credit previously canceled in another retirement system administered by the board if the member holds a position included in the system of which the person is a member and has held the position for at least 12 months. The method of reestablishment and the amount to be deposited are as provided by the applicable law providing for reestablishment of service credit generally in the particular retirement system.

SECTION 2. Subtitle A, Title 8, Government Code, is amended by adding Chapter 805 to read as follows:

CHAPTER 805. CREDIT TRANSFER BETWEEN EMPLOYEES RETIREMENT SYSTEM OF TEXAS AND TEACHER RETIREMENT SYSTEM OF TEXAS

Sec. 805.001. DEFINITIONS. In this chapter:

(1) "Employees retirement system" means the Employees Retirement System of Texas.

(2) "Member" means a person having membership in the employees retirement system or the teacher retirement system under statutes and rules governing membership in the respective systems.

(3) "Service credit" has the meaning assigned, as applicable, by Section 811.001 or Section 821.001.

(4) "System" means the employees retirement system or the teacher retirement system.

(5) "Teacher retirement system" means the Teacher Retirement System of Texas.

Sec. 805.002. ELIGIBILITY TO TRANSFER SERVICE CREDIT.

(a) A member of both the employees retirement system and the teacher retirement system who applies for service or disability retirement from either system may transfer to that system service credit established in the other system if the member has at least three years of service credit in the system from which the member is retiring.

(b) A member of both the employees retirement system and the teacher retirement system who has less than three years of service credit in the

system in which the person most recently received service credit may, at the time the person applies for service or disability retirement from the other system, transfer service credit to that system from the system in which the person most recently received service credit.

(c) Except as provided by Subsections (e) and (f), a member of the employees retirement system or the teacher retirement system who formerly was a member of the other system may reinstate or purchase service credit in the other system for the purpose of making a transfer under Subsection (a) if the member has at least three years of service credit in the system in which the person currently is a member.

(d) Except as provided by Subsections (e) and (f), the designated beneficiary of a member of the employees retirement system or the teacher retirement system who dies while holding a position included in the membership of the system may make a transfer under Subsection (a) and a reinstatement or purchase under Subsection (c) if the deceased member had at least three years of service credit in the system in which the member was performing service at the time of death. The designated beneficiary may make a transfer under Subsection (b) if the deceased member had less than three years of service credit in the system in which the member was performing service at the time of death. If a member is not survived by a designated beneficiary, the personal representative of the member's estate has the same right under this subsection as a designated beneficiary.

(e) Service credit that is canceled by a termination of membership that occurs after August 31, 1993, may be reinstated and other service purchased only by a member of the system in which the service is creditable who meets the general requirements for reinstatement or purchase of service credit in that system.

(f) A person who is receiving retirement benefits based on the person's service credited in one system and who applies for service or disability retirement from the other system is not eligible to transfer service credit under this chapter. The designated beneficiary, or the personal representative of the estate, of a person who at the time of death was receiving benefits based on the person's service credited in one system and who held a position included in the other system is not eligible to transfer service credit under this chapter.

Sec. 805.003. PAYMENTS TO REINSTATE OR PURCHASE SERVICE CREDIT. The cost of reinstating or purchasing service credit under Section 805.002 is determined according to the statutes that govern the reinstatement or purchase of the type of service credit in the system in which it is to be reinstated or purchased. All payments for service credit reinstated or purchased under Section 805.002 must be made before retirement or the first payment of a death benefit annuity, as applicable.

Sec. 805.004. TRANSFER OF SERVICE CREDIT. (a) A person who elects to transfer service credit under Section 805.002 shall notify, in the manner required by the system to which the credit will be transferred, the system of the election. The system shall notify the other system of the election.



(b) The systems by rule or agreement shall determine the manner in which the service credit is transferred.

(c) A transfer of service credit under this chapter cancels service credit and, if applicable, membership in the system from which it is transferred.

Sec. 805.005. APPLICABILITY OF PROPORTIONATE RETIREMENT PROGRAM. An election to transfer service credit under Section 805.002 is an alternative to participation in the program provided by Chapter 803, except that a person having service credit in the employees retirement system, the teacher retirement system, and another public retirement system participating in that program may transfer service credit under this chapter, if eligible, and use the combined service credit for purposes of the program provided by Chapter 803.

Sec. 805.006. CREDITING OF TRANSFERRED SERVICE CREDIT: REFUND. (a) Except as provided by Subsections (b) and (c), service credit transferred under this chapter is credited in the system to which it is transferred according to rules of the teacher retirement system determining the amount of service creditable.

(b) Not more than one month of service credit may be granted for service during that month.

(c) A person who transfers service credit under this chapter may not receive service credit for all military service performed in an amount that exceeds the maximum amount creditable in the system to which credit is transferred. A person is eligible for a refund from the system from which credit is transferred under this section of contributions made for military service credit, other than any amount that represents a fee, that exceeds the maximum amount creditable.

Sec. 805.007. EFFECT OF TRANSFER OF SERVICE CREDIT. (a) A person who transfers service credit under this chapter forfeits all rights to benefits payable by the system from which it is transferred and is not an annuitant of that system for any purpose, including the payment of postretirement increases to annuitants of that system.

(b) Service credit transferred under this chapter is considered as if it had been granted for service performed under the system to which it has been transferred and is used in satisfying minimum service requirements for retirement and in determining the amount of benefits that are based on the amount of a person's service credit:

(1) except that a person's average salary for the purpose of computing an annuity may be determined only from service credit that was originally established in one system and that results in the higher average salary; and

(2) except as provided by Section 805.006.

Sec. 805.008. RESPONSIBILITY FOR BENEFIT PAYMENTS. (a) The system from which a person's service credit is transferred under this chapter shall transfer to the other system, at the time the annuity based on the service credit becomes payable, an amount equal to the portion of the actuarial value of the annuity that represents the percentage of the total amount of the person's service credited in both systems that was credited in the system from which the credit is being transferred.

(b) The systems jointly by rule shall adopt actuarial tables and investment assumptions to be used in computing actuarial values under this section.

(c) For the purpose of computing an amount to be transferred under this section, service credit in either system must be considered as if it were credited under rules of the teacher retirement system determining the amount of service creditable.

(d) An amount transferred under this section is payable from amounts credited to the person's individual account and amounts credited to the account in which the system places state contributions. An amount received under this section shall be deposited in the account from which the system receiving the amount pays annuities.

(e) The system to which a transfer is made under this section is responsible for paying the annuity for which the transfer was made, including the entire amount of any increase in the annuity granted after the transfer.

Sec. 805.009. RULES. In addition to the rules specifically required by this chapter, a system may adopt other rules for the administration of this chapter.

SECTION 3. Subchapter B, Chapter 813, Government Code, is amended by adding Section 813.104 to read as follows:

Sec. 813.104. Alternative Payments to Establish or Reestablish Service Credit. (a) A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.

(b) A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.

(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.

(d) Payments may not be made under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 813.201.

(e) The retirement system may adopt rules to administer this section.

SECTION 4. Subchapter B, Chapter 813, Government Code, is amended by adding Section 813.105 to read as follows:

Sec. 813.105. PAYROLL DEDUCTIONS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) A contributing member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.

(b) A payment authorized by this section consists of a monthly payroll deduction in an amount not less than one-twelfth of the contribution required to establish or reestablish at least one year of service credit.

including any required interest and membership fee, except as provided by Subsection (c).

(c) Payments to establish or reestablish service credit of less than one year or to establish or reestablish service credit by a member who plans to retire in less than a year may be made by payroll deduction for a period determined by the retirement system.

(d) Payroll deductions for payments under this section shall be made and submitted to the retirement system at the times and in the manner provided for member contributions under Section 815.402.

(e) The retirement system shall credit a member's payments made under this section to a suspense account in the trust fund until the sum of the payments equals the amount required for one year of service credit or the amount required for credit under Subsection (c), at which time the retirement system shall deposit the payments in the appropriate accounts in the trust fund and grant the applicable amount of service credit.

(f) A member who, while making payments under this section, ceases to hold a position or withdraws the authority for payroll deductions may contract with the retirement system for an alternative method of continuing the payments. The retirement system may refund payments credited to the suspense account and not transferred to trust fund accounts if a remaining payment becomes delinquent by more than 60 days.

(g) Payments may not be made under this section to establish or reestablish service credit of a person who has retired or died, except that a beneficiary may make payment in a lump sum for the remainder of service credit for which payments were begun before the member's death.

(h) The retirement system may adopt rules to administer this section.

SECTION 5. Subchapter B, Chapter 813, Government Code, is amended by adding Section 813.106 to read as follows:

Sec. 813.106. SERVICE NOT PREVIOUSLY ESTABLISHED. The state shall make contributions for service not previously established that is established under Section 813.104 or 813.105 in the amount provided by Section 813.202(e) for membership service or the amount provided by Section 813.302(d) for military service, as applicable. The state contributions will be made at the time the service credit is granted.

SECTION 6. Subsection (b), Section 813.304, Government Code, is amended to read as follows:

(b) The retirement system shall use military service credit in computing service retirement or nonoccupational disability retirement benefits of a member of the employee class only if the member has, without military service credit, at least five [40] years of service credit in that class.

SECTION 7. Section 813.504, Government Code, is amended to read as follows:

Sec. 813.504. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY CANCELED. A member may reestablish service credit previously canceled in the retirement system if the member, after cancellation of the credit, holds a position for six [24] months that is included in the employee class.

SECTION 8. Subsection (a), Section 813.509, Government Code, is amended to read as follows:

(a) A member who retires based on service or a disability is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the last day of employment. Sick leave is creditable in the retirement system at the rate of one month of service credit for each 20 ~~[40]~~ days, or 160 ~~[320]~~ hours, of accumulated sick leave. An increment of less than 20 ~~[40]~~ days is not creditable.

SECTION 9. Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.510 to read as follows:

Sec. 813.510. CREDIT FOR COUNTY CHILD WELFARE BOARD SERVICE. (a) An eligible member may, before September 1, 1994, claim service credit not otherwise creditable in the retirement system for service performed before September 1, 1980, for a county child welfare board.

(b) A member eligible to claim credit under this section is one who:

(1) was a contributing member on August 31, 1993, having performed at least 24 months of continuous state service as of that date; and

(2) was subject during the period of welfare board service to personnel rules of and direct supervision by the Texas Department of Human Services or its predecessor.

(c) A member may claim credit under this section by depositing with the retirement system in a lump sum:

(1) a contribution based on the member's monthly salary during the period of service for a county child welfare board and computed for the number of months for which credit is sought at the combined rates currently required of the state and employee members of the system for new service;

(2) interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit; and

(3) any membership fees required of members of the system during the period beginning on the date the service began and ending on the date of deposit.

(d) The retirement system shall deposit the salary contribution in the member's individual account in the employees saving account, interest in the state accumulation account, and membership fees in the expense account.

(e) The retirement system shall determine the amount to be deposited in each case and may not grant service credit under this section until the required amount has been paid in full.

(f) Service credit may not be established under this section if the service is currently credited in another public retirement system.

(g) This section expires October 1, 1994.

SECTION 10. Subchapter G, Chapter 814, Government Code, is amended by adding Section 814.603 to read as follows:

Sec. 814.603. SUPPLEMENTAL ONE-TIME PAYMENT. (a) The retirement system shall make a supplemental payment to persons whose annuities are described by Section 814.107, 814.207, 814.305, or 814.601(a) and that are based on service retirements, disability retirements, or deaths. This supplemental payment is in addition to the regular monthly

annuity payment. Each person who receives an annuity described by this subsection is entitled to receive one payment equal to 10 percent of one month's annuity payment for each fiscal year before the fiscal year beginning September 1, 1993, in which the annuity has been paid. A supplemental payment may not exceed 350 percent of a monthly annuity. Only a person whose annuity began in the fiscal year ending August 31, 1993, or earlier is eligible for the supplemental payment. Supplemental payments under this subsection must comply with Section 811.006.

(b) The retirement system shall pay the supplemental payment provided by Subsection (a) from the retirement annuity reserve account and may transfer to that account from the state accumulation account any portion of the amount that exceeds the amount in the retirement annuity reserve account available to finance this supplemental payment and that is actuarially determined to be necessary to finance the supplemental payment.

(c) The board of trustees may adopt rules to implement the payment, including rules that govern the timing of the supplemental payment described by Subsection (a).

(d) The board of trustees may by rule authorize similar supplemental payments in the fiscal year ending August 31, 1995, if the payments are in compliance with Section 811.006.

SECTION 11. Section 815.002, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 12. Subchapter A, Chapter 815, Government Code, is amended by adding Section 815.0031 to read as follows:

Sec. 815.0031. INELIGIBILITY FOR BOARD AND OF CERTAIN EMPLOYEES. (a) A person is not eligible for appointment or election to the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the retirement system; or

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the retirement system.

(b) A paid officer, employee, or consultant of a Texas trade association in the field of insurance or investment may not be a trustee or an employee of the retirement system who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of a paid officer, manager, or consultant of a Texas trade association in the field of insurance or investment may not be a trustee and may not be an employee of the retirement system who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(e) A person may not serve as a trustee or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business or an association related to the operation of the board.

SECTION 13. Subchapter A, Chapter 815, Government Code, is amended by adding Section 815.008 to read as follows:

Sec. 815.008. GROUNDS FOR REMOVAL OF TRUSTEE. (a) It is a ground for removal from the board if a trustee:

(1) violates a prohibition established by Section 815.0031;

(2) cannot discharge the person's duties for a substantial part of the term for which the person is appointed or elected because of illness or disability; or

(3) is absent from more than half of the regularly scheduled board meetings that the person is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a trustee exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the appropriate appointing officer, if any, that a potential ground for removal exists.

SECTION 14. Subchapter B, Chapter 815, Government Code, is amended by adding Section 815.111 to read as follows:

Sec. 815.111. MISCELLANEOUS BOARD DUTIES. (a) The board shall provide to its trustees and employees, as often as necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the retirement system.

(c) The board shall prepare information of interest to the retirement system's members describing the functions of the system and the system's procedures by which complaints are filed with and resolved by the system. The system shall make the information available to the system's members and appropriate state agencies.

(d) The board by rule shall establish methods by which members are notified of the name, mailing address, and telephone number of the retirement system for the purpose of directing complaints to the system.

(e) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(f) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable

access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

SECTION 15. Subchapter C, Chapter 815, Government Code, is amended by adding Section 815.212 to read as follows:

Sec. 815.212. EMPLOYMENT PRACTICES. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all non-entry-level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for retirement system employees must be based on the system established under this subsection.

(c) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the retirement system's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the retirement system's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(d) A policy statement prepared under Subsection (c) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(e) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (d). The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 16. Subsections (a) and (b), Section 815.301, Government Code, are amended to read as follows:

(a) The board of trustees shall:

(1) ~~invest the assets of the retirement system[, other than assets of the law enforcement and custodial officer supplemental retirement fund,]~~ as a single fund without distinction as to their source; and

(2) hold securities purchased with the assets described by Subsection (a)(1) collectively for the proportionate benefit of:

(A) all accounts in the trust fund that are listed in Section 815.310(b); and

(B) the law enforcement and custodial officer supplemental retirement fund.

(b) ~~The [Except for assets of the law enforcement and custodial officer supplemental retirement fund, the]~~ board of trustees may, under the standard of care provided by Section 815.307, invest and reinvest any of

the retirement system's assets and may commingle assets of the trust fund and the law enforcement and custodial officer supplemental retirement fund with the assets of the Judicial Retirement System of Texas Plan Two for investment purposes, as long as proportionate ownership records are maintained and credited. Investments may include home office facilities, including land, equipment, and office building, used in administering the retirement system.

SECTION 17. Subsection (b), Section 815.310, Government Code, is amended to read as follows:

(b) All assets of the trust fund shall be credited, according to the purpose for which they are held, to one of the following accounts:

- (1) employees saving account;
- (2) state accumulation account;
- (3) retirement annuity reserve account;
- (4) interest account; ~~or~~
- (5) expense account[~~—or~~
- ~~[(6) benefit increase reserve account].~~

SECTION 18. Subsection (a), Section 815.313, Government Code, is amended to read as follows:

(a) The retirement system shall transfer to the retirement annuity reserve account money as required by Section 815.318, 815.319, ~~[815.320,]~~ or 815.321.

SECTION 19. Subsection (a), Section 815.317, Government Code, is amended to read as follows:

(a) The retirement system shall deposit in the law enforcement and custodial officer supplemental retirement fund state contributions and other ~~[payments made as provided by Section 815.405, any]~~ appropriations made by the legislature to the fund~~[- money collected under Section 2(1), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes);]~~ and proceeds from investment of the fund.

SECTION 20. Section 815.318, Government Code, is amended to read as follows:

Sec. 815.318. TRANSFER OF ASSETS FROM INTEREST ACCOUNT. (a) The board of trustees shall transfer from the interest account to the employees saving account amounts of interest computed under Section 815.311 at the following times:

(1) as required during the fiscal year for a member's account in the retirement system that is closed before the last day of the fiscal year; and

(2) as of the last day of the fiscal year for a member's account that is not closed before the last day of the fiscal year.

(b) As required during the year, the board of trustees shall transfer from the interest account to the expense account amounts it determines necessary for the payment of the retirement system's expenses that exceed the amount of money available for those expenses.

(c) As of the last day of each fiscal year, the board of trustees shall transfer from the interest account to the retirement annuity reserve account an amount equal to:



(1) five percent of the mean amount in the retirement annuity reserve account for that fiscal year; or

(2) an amount computed at a greater rate if the actuary recommends the greater rate to finance adequately the annuities payable from the retirement annuity reserve account.

~~(d) [As of the last day of each fiscal year, the board of trustees shall transfer from the interest account to the benefit increase account an amount computed at the rate set by the board under Section 815.106.]~~

~~[(e)]~~ After making the transfers required by this section, the board of trustees, as of the last day of each fiscal year, shall transfer the amount remaining in the interest account to the state accumulation account.

SECTION 21. Subsection (c), Section 815.401, Government Code, is amended to read as follows:

(c) If the legislature appropriates, on behalf of each contributing member for any fiscal year, a membership fee to be deposited in the expense account in an amount equal to or greater than the membership fee required by Subsection (a), the members are not required to pay the membership fee for that year. The retirement system may apply the membership fee to the administration of any program administered by the board of trustees.

SECTION 22. Section 815.403, Government Code, is amended by amending Subsections (a) and (b) and by adding Subsection (g) to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system:

(1) an amount equal to 7.4 percent of the total compensation of all members of the retirement system for that year;

(2) money to pay lump-sum death benefits for retirees under Section 814.501;

(3) an amount for the law enforcement and custodial officer supplemental retirement fund equal to 2.13 percent of the aggregate state compensation of all custodial and law enforcement officers for that year;

~~(4) money necessary for the administration [and payment] of [benefits from] the law enforcement and custodial officer supplemental retirement fund; and~~

~~(5) [(4)]~~ money for service credit not previously established, as provided by Section 813.202(e) or 813.302(d).

(b) Before November 2 of each even-numbered year, the retirement system shall certify to the Legislative Budget Board and to the budget division of the governor's office for review:

(1) an estimate of the amount necessary to pay the state's contribution under Subsections (a)(1), (a)(2), ~~(a)(3), and (a)(5) [(a)(4)]~~ for the following biennium;

~~[(2) the estimated amount, based on actuarial valuations, of appropriated funds required in addition to other available money to finance all benefits provided from the law enforcement and custodial officer supplemental retirement fund for the following biennium;~~

~~[(3) the estimated amount, based on actuarial valuations, of appropriated funds required for the following biennium to fully finance,~~

~~within a period of not more than 36 years after September 1, 1979, liabilities of the law enforcement and custodial officer supplemental retirement fund accrued because of service performed before September 1, 1979;] and~~

(2) ~~(4)~~ as a separate item, an estimate of the amount required to administer the law enforcement and custodial officer supplemental retirement fund for the following biennium.

(g) The contributions from the state to the law enforcement and custodial officer supplemental retirement fund may be made only from the general revenue fund.

SECTION 23. Section 815.505, Government Code, is amended to read as follows:

Sec. 815.505. CERTIFICATION OF NAMES OF LAW ENFORCEMENT AND CUSTODIAL OFFICERS. Not later than the 12th day of the month following the month in which a person begins or ceases employment as a law enforcement officer or custodial officer [As of the last day of each fiscal year], the [Department of] Public Safety Commission, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Commission [Department], or [the State Purchasing and General Services Commission; and] the Texas Board [Department] of Criminal Justice, as applicable, [Corrections] shall certify to the retirement system, in the manner prescribed by the system, the name of the employee and such other information as the system determines is necessary for the crediting of service and financing of benefits under this subtitle [the names of employees and the amount of service each employee performed as a law enforcement officer or custodial officer during that fiscal year].

SECTION 24. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.5071 to read as follows:

Sec. 815.5071. TRUSTEE-TO-TRUSTEE TRANSFER. Notwithstanding Section 811.005 and to the extent required as a condition of plan qualification under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401), the retirement system shall, in accordance with Section 401(a)(31) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)(31)) and related regulations, permit the distributee of an eligible rollover distribution to elect to have the distribution paid directly to an eligible retirement plan specified by the distributee in the form of a direct trustee-to-trustee transfer. The board of trustees may adopt rules to carry out this section. Terms used in this section have the meanings assigned by the Internal Revenue Code of 1986 (Title 26, United States Code).

SECTION 25. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.508 to read as follows:

Sec. 815.508. COMPLAINT FILES. (a) The retirement system shall keep an information file about each complaint filed with the system that the system has authority to resolve.

(b) If a written complaint is filed with the retirement system that the system has authority to resolve, the system, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint

of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 26. Subchapter F, Chapter 815, Government Code, is amended by adding Sections 815.509 and 815.510 to read as follows:

Sec. 815.509. ADVISORY COMMITTEES. (a) The board of trustees may establish advisory committees as it considers necessary to assist it in performing its duties. Members of advisory committees established under this section serve at the pleasure of the board.

(b) Notwithstanding any other law to the contrary, the board of trustees by rule shall determine the amount and manner of any compensation or expense reimbursement to be paid members of an advisory committee performing service for the retirement system for performing the work of the advisory committee. All compensation and expense reimbursements for an advisory committee established under this section are payable from the expense account.

Sec. 815.510. ANNUAL REPORT. (a) The Employees Retirement System of Texas shall submit a report not later than the 25th day of the month following the end of each fiscal year to the governor, the lieutenant governor, the speaker of the house of representatives, the executive director of the State Pension Review Board, the appropriate oversight committees of the house and senate, and the Legislative Budget Board. The report shall include the following:

- (1) the current end-of-fiscal year market value of the trust fund;
- (2) the current book value of the trust fund;
- (3) the asset allocations of the trust fund expressed in percentages of stocks, fixed income, cash, or other financial investments; and
- (4) the investment performance of the trust fund utilizing accepted industry measurement standards.

(b) The report required by this section is the only periodic report of investments required to be made by the retirement system other than a report required by Section 815.108 or the General Appropriations Act.

SECTION 27. Before October 1, 1995, the Public Safety Commission, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Commission, and the Texas Board of Criminal Justice shall certify to the Employees Retirement System of Texas, in the manner prescribed by the retirement system, the name of each person employed on September 1, 1995, by the particular agency as a law enforcement officer, as defined by Section 811.001, Government Code, or a custodial officer, as defined by that section, and such other information as the system determines is necessary for the crediting of service and financing of benefits under Subtitle B, Title 8, Government Code.

SECTION 28. (a) All persons who were employed by the Texas Rehabilitation Commission on August 31, 1993, who were contributing members of the Teacher Retirement System of Texas on that date, and who remain employees of the Texas Rehabilitation Commission on September 1, 1993, become members of the Employees Retirement System of Texas on the latter date.

(b) At the time of the retirement or death of a person described by Subsection (a) of this section, the Teacher Retirement System of Texas and

the Employees Retirement System of Texas shall make a computation and transfer of money in the manner provided by Section 805.008, Government Code, as added by this Act, and the person's service credit in the Teacher Retirement System of Texas will be transferred to the Employees Retirement System of Texas. The Employees Retirement System of Texas has the same responsibility for payments after retirement or death as is provided by Section 805.008, Government Code, as added by this Act.

(c) Notwithstanding Chapter 805, Government Code, as added by this Act, a person who becomes a member of the Employees Retirement System of Texas under this section is not eligible to transfer service credit from the Employees Retirement System of Texas to the Teacher Retirement System of Texas.

SECTION 29. (a) A retiree of the Employees Retirement System of Texas who at the time of retirement had at least 25 years of service credit in the retirement system and has served as the executive head of a legislative service agency is eligible to make an election under this section.

(b) A member of the Employees Retirement System of Texas who was an elected officer of the 73rd Senate of the State of Texas, as determined by the senate journal, and who has at least 28 years of service credit in the retirement system and has attained the age of 50 is eligible to make an election under this section.

(c) An election under this section must be made in writing and filed with the Employees Retirement System of Texas and is irrevocable after filing. An election under Subsection (a) of this section must be filed before January 1, 1994. After the filing of an election under this section, the retirement system shall consider all the service credit established by the person who makes the election, including service credit established after the date the election is filed, as if it were performed as a member of the elected class of membership.

SECTION 30. Chapter 805, Government Code, as added by this Act, applies only to retirements and deaths that occur on or after August 31, 1993.

SECTION 31. Subchapter B, Chapter 833, Government Code, is amended by adding Section 833.105 to read as follows:

Sec. 833.105. Alternative Payments to Establish or Reestablish Service Credit. (a) A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.

(b) A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.

(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.

(d) Payments may not be made under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 833.101.

(e) The retirement system may adopt rules to administer this section.

SECTION 32. Subchapter B, Chapter 833, Government Code, is amended by adding Section 833.106 to read as follows:

Sec. 833.106. PAYROLL DEDUCTIONS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) A contributing member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.

(b) A payment authorized by this section consists of a monthly payroll deduction in an amount not less than one-twelfth of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fee, except as provided by Subsection (c).

(c) Payments to establish or reestablish service credit of less than one year or to establish or reestablish service credit by a member who plans to retire in less than a year may be made by payroll deduction for a period determined by the retirement system.

(d) Payroll deductions for payments under this section shall be made and submitted to the retirement system at the times and in the manner provided for member contributions under Section 835.101.

(e) The retirement system shall credit a member's payments made under this section to a suspense account until the sum of the payments equals the amount required for one year of service credit or the amount required for credit under Subsection (c), at which time the retirement system shall deposit the payments in the general revenue fund and grant the applicable amount of service credit.

(f) A member who, while making payments under this section, ceases to be a judicial officer or withdraws the authority for payroll deductions may contract with the retirement system for an alternative method of continuing the payments. The retirement system may refund payments credited to the suspense account and not transferred to the general revenue fund if a remaining payment becomes delinquent by more than 60 days.

(g) Payments may not be made under this section to establish or reestablish service credit of a person who has retired or died, except that a beneficiary may make payment in a lump sum for the remainder of service credit for which payments were begun before the member's death.

(h) The retirement system may adopt rules to administer this section.

SECTION 33. Subchapter B, Chapter 838, Government Code, is amended by adding Section 838.105 to read as follows:

Sec. 838.105. Alternative Payments to Establish or Reestablish Service Credit. (a) A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.

(b) A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's

last in a series of payments under this section may be for a period of remaining service that is less than one year.

(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.

(d) Payments may not be made under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 838.101.

(e) The retirement system may adopt rules to administer this section.

SECTION 34. Subchapter B, Chapter 838, Government Code, is amended by adding Section 838.106 to read as follows:

Sec. 838.106. PAYROLL DEDUCTIONS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) A contributing member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.

(b) A payment authorized by this section consists of a monthly payroll deduction in an amount not less than one-twelfth of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fee, except as provided by Subsection (c).

(c) Payments to establish or reestablish service credit of less than one year or to establish or reestablish service credit by a member who plans to retire in less than a year may be made by payroll deduction for a period determined by the retirement system.

(d) Payroll deductions for payments under this section shall be made and submitted to the retirement system at the times and in the manner provided for member contributions under Section 840.102.

(e) The retirement system shall credit a member's payments made under this section to a suspense account in the trust fund until the sum of the payments equals the amount required for one year of service credit or the amount required for credit under Subsection (c), at which time the retirement system shall deposit the payments in the appropriate accounts in the trust fund and grant the applicable amount of service credit.

(f) A member who, while making payments under this section, ceases to be a judicial officer or withdraws the authority for payroll deductions may contract with the retirement system for an alternative method of continuing the payments. The retirement system may refund payments credited to the suspense account and not transferred to trust fund accounts if a remaining payment becomes delinquent by more than 60 days.

(g) Payments may not be made under this section to establish or reestablish service credit of a person who has retired or died, except that a beneficiary may make payment in a lump sum for the remainder of service credit for which payments were begun before the member's death.

(h) The retirement system may adopt rules to administer this section.

SECTION 35. Subchapter B, Chapter 838, Government Code, is amended by adding Section 838.107 to read as follows:

Sec. 838.107. SERVICE NOT PREVIOUSLY ESTABLISHED. The state shall make contributions for service not previously established that

is established under Section 838.105 or 838.106 in the amount provided by Section 838.103(f) for military service. The state contributions will be made at the time the service credit is granted.

SECTION 36. Subsection (a), Section 839.101, Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least one year;

(2) is at least 65 years old and has at least 12 years of service, continuous or otherwise, credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 ~~[25]~~ years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least 10 years, regardless of whether the member currently holds a judicial office.

SECTION 37. Section 839.102, Government Code, is amended to read as follows:

Sec. 839.102. SERVICE RETIREMENT ANNUITY. (a) Except as provided by Subsections (b) and (c), the standard service retirement annuity is an amount equal to 50 percent of the state salary being paid at the time the member retires to a judge of a court of the same classification as the last court to which the retiring member was elected or appointed ~~[computed on the basis of the member's average monthly compensation for the 36 highest months of compensation during the last 60 months of service, multiplied by one-twelfth of three percent for each month of service that is credited in the retirement system].~~

(b) The retirement system shall increase by 10 percent of the amount of the applicable state salary under Subsection (a) or (c) the annuity of a member who on the effective date of retirement has not been out of judicial office for more than one year ~~[standard service retirement annuity may not be more than 60 percent of the average monthly compensation computed under Subsection (a)].~~

(c) The standard service retirement annuity of a person qualifying for retirement under Section 839.101(b) is an amount computed as a percentage of the state salary being paid at the time the member retires to a judge of a court of the same classification as the last court to which the retiring member was elected or appointed, according to the following schedule:

<u>age at retirement</u>	<u>percentage of state salary</u>
<u>at least 60 but less than 61</u>	<u>40 percent</u>
<u>at least 61 but less than 62</u>	<u>41.7 percent</u>
<u>at least 62 but less than 63</u>	<u>43.6 percent</u>
<u>at least 63 but less than 64</u>	<u>45.6 percent</u>
<u>at least 64 but less than 65</u>	<u>47.7 percent</u>

~~[as provided by Subsection (a), reduced by one-third of one percent for each whole or partial calendar month that occurs during the period from~~

~~the date of retirement to the date of the retiree's 65th birthday, including the months that contain the dates of retirement and birthday].~~

SECTION 38. Subsection (b), Section 840.103, Government Code, is amended to read as follows:

(b) Before November 2 of each even-numbered year, the retirement system shall certify to the Legislative Budget Board and to the budget division of the governor's office for review:

(1) an actuarial valuation of the retirement system to determine the percentage of annual payroll required from the state to finance fully the retirement system as provided by Section 840.106 ~~[without any unfunded liability]~~;

(2) an estimate of the amount necessary to pay the state's contribution under Subdivision (1) for the following biennium; and

(3) as a separate item, an estimate of the amount, in addition to anticipated receipts from membership fees, required to administer the retirement system for the following biennium.

SECTION 39. Subchapter B, Chapter 840, Government Code, is amended by adding Section 840.106 to read as follows:

Sec. 840.106. ACTION INCREASING AMORTIZATION PERIOD.

(a) A rate of member or state contributions to or a rate of interest required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation.

SECTION 40. Subsection (a), Section 840.301, Government Code, is amended to read as follows:

(a) The board of trustees may, under the standard of care provided by Section 840.303, invest and reinvest the retirement system's assets and may commingle assets of the trust fund with the assets of the Employees Retirement System of Texas, including its trust fund and the law enforcement and custodial officer supplemental retirement fund, for investment purposes, as long as proportionate ownership records are maintained and credited.

SECTION 41. Subchapter E, Chapter 840, Government Code, is amended by adding Section 840.405 to read as follows:

Sec. 840.405. TRUSTEE-TO-TRUSTEE TRANSFER. Notwithstanding Section 836.004 and to the extent required as a condition of plan qualification under Section 401(a) of the Internal Revenue Code of 1986



(26 U.S.C. Section 401), the retirement system shall, in accordance with Section 401(a)(31) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)(31)) and related regulations, permit the distributee of an eligible rollover distribution to elect to have the distribution paid directly to an eligible retirement plan specified by the distributee in the form of a direct trustee-to-trustee transfer. The board of trustees may adopt rules to carry out this section. Terms used in this section have the meanings assigned by the Internal Revenue Code of 1986 (Title 26, United States Code).

SECTION 42. Subchapter E, Chapter 840, Government Code, is amended by adding Section 840.406 to read as follows:

Sec. 840.406. PLAN QUALIFICATION. (a) The provisions of this subtitle shall be interpreted and administered in a manner that permits the retirement system's benefit plan to be considered a qualified plan under Section 401, Internal Revenue Code of 1986 (26 U.S.C. Section 401). The board of trustees may adopt rules necessary to accomplish that purpose, and those rules are considered a part of the plan.

(b) The retirement system's benefit plan shall be considered the primary retirement plan for members of the retirement system in determining qualification status under Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)).

SECTION 43. Subparagraph (A), Paragraph (5), Subsection (a), Section 3, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by Chapters 242 and 391, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(A) "Employee" [~~"State-employee"~~] shall mean any appointive or elective state officer or employee in the service of the State of Texas, including an employee of an institution of higher education:

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Subtitle B, D, or E, or Chapter 803, Title 8, Government Code, who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Subtitle C, Title 8, Government Code, whose last employment with the state prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, the Texas Higher Education Coordinating Board, or an institution of higher education, or who is retired or retires and is an annuitant under the optional retirement program established by Chapter 830, Government Code, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Texas Higher Education Coordinating Board, or an institution of higher education, and if the person either:

(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(b) is disabled;  
(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state;

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act;

(iv) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act;

(v) who is a member of the governing body of an institution of higher education, as that term is defined by Section 61.003, Education Code, including subsequent amendments to that section;

(vi) who is a member of the State Board of Education;

(vii) who receives compensation for services rendered to an institution of higher education on a warrant or check issued pursuant to a payroll certified by an institution of higher education or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas; or

(viii) ~~(vi)~~ who receives compensation for services rendered to an institution of higher education as provided by this subdivision but is not permitted to be a member of the Teacher Retirement System of Texas because the person is solely employed by an institution of higher education that as a condition of employment requires the person to be enrolled as a student in an institution of higher education in graduate-level courses and who is employed by the institution at least 20 hours a week.

SECTION 44. Paragraphs (6), (14), and (15), Subsection (a), Section 3, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(6) "Employer" shall mean the State of Texas ~~and~~ all its departments ~~and any participating school district~~.

(14) "Part-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working less than 20 hours per week. A part-time ~~state~~ employee shall receive the benefits of one-half the amount of the state's contribution received by full-time employees.

(15) "Full-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working 20 or more hours per week. A full-time ~~state~~ employee shall receive the benefits of a full state contribution for coverage under this Act.

SECTION 45. Subsection (e), Section 5, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by Chapters 391 and 850, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) The trustee is authorized to select, contract for, and make available to eligible employees and annuitants in a specific area of the state, services performed by health maintenance organizations which are approved by the federal government or the State of Texas to offer health care services in that area. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits in the Employees Uniform Group Insurance Program; ~~and the employer contributions provided by Section 14(a) or (b) of this Act for health care coverage shall be paid to the selected health maintenance organizations on behalf of the participants].~~

SECTION 46. Subsection (a), Section 13B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee may study the feasibility of establishing a cafeteria plan and may design, develop, adopt, implement, and administer a cafeteria plan if the trustee determines that the establishment of a cafeteria plan is feasible, would be beneficial to the state and to the [state] employees who would be eligible to participate in the cafeteria plan, and would not adversely affect the insurance program established under this Act. The trustee may include in the cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

SECTION 47. Section 14, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by Chapters 391 and 850, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 14. PAYMENT OF CONTRIBUTIONS. (a) The trustee shall use the amount appropriated for employer contributions in accordance with Section 15 of this Act to fund the basic coverage. The trustee may equitably allocate to each health benefits plan the employer contributions that would be required to fund basic health coverage for participants in the plans to the extent funds are available. In allocating the employer contributions among plans, the trustee shall consider the relevant risk characteristics of each plan's enrollment, including demographic variations in the use and cost of health care and the prevailing cost patterns in the area in which the plan operates. The allocation must be reasonable and set in a manner which assures employees a fair choice among health benefit plans providing a basic plan. The contribution set for each employee shall be within the total amount appropriated in the General Appropriations Act.

(b) Any employer contributions remaining after the basic coverage has been funded may be allocated by the trustee to fund optional coverages in any manner the trustee determines is appropriate. ~~[Each participating school district shall contribute, for each school district employee covered by the program, an amount equal to the employee-only cost of the plans of group coverages authorized by the trustee for school district employees;~~

~~provided that the school district's contribution may not exceed the amount contributed for each state employee in accordance with Subsection (a) of this section. If the cost of the plan authorized by the trustee for school district employees exceeds the amount of the district's contribution, the district shall deduct from the monthly compensation of the employee an amount sufficient to pay the amount of the premiums not covered by the district's contribution.]~~

(c) ~~The trustee may not allocate any employer contributions to fund voluntary coverages. Voluntary coverages must be funded solely by employee contributions. [If an employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas, the employee's department, or the participating school district make any contribution to the cost of any other coverages, services, or benefits on such employee or annuitant.]~~

(d) ~~If the cost of the basic coverage exceeds the amount of employer contributions allocated to fund the basic coverage, the state shall deduct from or reduce the monthly compensation of the employee and shall deduct from the retirement benefits of the annuitant an amount sufficient to pay the cost of the basic coverage. [Except as provided by Subsection (c) of this section, if any employee or annuitant applies for coverages for which the cost exceeds the state's, the employing department's, or the participating school district's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of coverages under the said group programs and the amount contributed therefor by the State of Texas or the employing department.]~~

(e) ~~The trustee shall apply the amount of any employer contribution allocated to fund optional coverages to the excess of the cost of the basic and optional coverages for which the employee or annuitant has applied over the basic coverage contribution. Except as provided by Subsection (h) of this section, if an employee or annuitant applies for basic and optional coverages for which the cost exceeds the contributions for those coverages under this Act, the employee or annuitant shall authorize in writing in a form satisfactory to the trustee a deduction from the employee's or annuitant's monthly compensation or annuity equal to the difference between the cost of basic and optional coverages for which the employee or annuitant has applied and the employer contributions for basic and optional coverage. [If an employee elects to participate in the cafeteria plan, he shall execute a salary reduction agreement under which his monthly compensation will be reduced in an amount that is equal to the difference between the amount contributed for the coverages by the State of Texas, the employing department, or the participating school district and the cost of the coverages for which the employee is eligible to pay under the cafeteria plan. An employee who executes a salary reduction agreement for insurance coverages included in the cafeteria plan is considered to have elected to participate in the cafeteria plan and agreed to a salary reduction for the insurance coverages for subsequent plan years unless the participant, during an annual enrollment period specified by the~~

~~trustee, explicitly elects not to participate for the next plan year in the insurance coverages. After electing not to participate in insurance coverages included in the cafeteria plan, an employee must, to reestablish participation for subsequent plan years in insurance coverages included in the cafeteria plan, execute a new salary reduction agreement. A salary reduction agreement for other benefits of the cafeteria plan must be executed annually, during the annual enrollment period specified by the trustee, for each plan year. The employee shall pay any remaining portion of the cost of benefits that is not covered by the state's, department's, or district's contributions and the salary reductions under the cafeteria plan by executing a payroll deduction agreement.]~~

(f) Except as provided by Subsection (h) of this section, if an employee or annuitant applies for voluntary coverages, the employee shall authorize in writing in a form satisfactory to the trustee a deduction from the employee's monthly compensation or annuity equal to the cost of the voluntary coverages.

(g) If an employee or annuitant refuses the coverages or benefits provided under this Act in writing in a form satisfactory to the trustee, the state and the employee's department may not make any contribution to the cost of any coverages or benefits for the employee or annuitant.

(h) If an employee elects to participate in the cafeteria plan, the employee must execute a salary reduction agreement under which the employee's monthly compensation will be reduced in an amount that is equal to the difference between the employer contributions for basic and optional coverages and the cost of the cafeteria plan coverages identified by the trustee as comparable to the basic and optional coverages for which the employee is eligible. The salary reduction agreement must also provide for an additional reduction in the employee's compensation equal to the cost of voluntary coverages for which the employee has applied. An employee who executes a salary reduction agreement for insurance coverage included in the cafeteria plan has elected to participate in the cafeteria plan and agreed to a salary reduction for the insurance coverages for subsequent plan years unless the participant, during an annual enrollment period specified by the trustee, elects in writing not to participate for the next plan year in the insurance coverages. An employee who has elected not to participate in the cafeteria plan insurance coverages may re-enroll by executing a new salary reduction agreement during a subsequent annual enrollment period. A salary reduction agreement for cafeteria plan benefits other than insurance coverages must be executed annually, during the annual enrollment period. The employee shall pay any remaining portion of the cost of benefits that is not covered by the contributions for basic and optional coverages and the salary reduction under the cafeteria plan by executing a payroll deduction agreement.

SECTION 48. Subsection (a), Section 15, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) On or before the first day of November next preceding each regular session of the legislature, the trustee shall certify to the Legislative Budget Board and budget division of the governor's office for information

and review the amount necessary to pay the contributions of the State of Texas to the trustee for the coverages provided under this Act during the ensuing biennium. A state contribution may not be made for coverages under this Act selected by a person who receives a state contribution, other than as a spouse, dependent, or beneficiary, for coverages under a group benefits program provided by an institution of higher education, as that term is defined by Section 61.003, Education Code. This amount shall be included in the budget of the state which the governor submits to the legislature.

SECTION 49. Subsections (a) and (b), Section 16, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(a) There is hereby created with the treasury of the State of Texas an Employees Life, Accident, and Health Insurance and Benefits Fund which shall be administered by the trustee. ~~The [Except as provided by Subsection (d) of this section, the]~~ contributions of employees, annuitants, ~~[participating school districts,]~~ and the state provided for under this Act shall be paid into the fund. The fund is available:

(1) without fiscal year limitation for all payments for any coverages provided for under this Act; and

(2) to pay expenses for administering this Act within the limitations that may be specified annually by the legislature.

(b) ~~Portions [Except as provided by Subsection (d) of this section, portions]~~ of the contributions made by employees, annuitants, ~~[participating school districts,]~~ and the state shall be regularly set aside in the fund as follows: a percentage determined by the trustee to be reasonably adequate to pay the administrative expenses made available by Subsection (a) of this section. The trustee, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves to be used by the trustee only for charges, claims, costs, and expenses under the program.

SECTION 50. Subsection (c), Section 17, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(c) Each state department ~~[and each participating school district]~~ shall keep such records, make such certifications, and furnish the trustee with such information and reports as may be necessary to enable the trustee to carry out its functions under this Act.

SECTION 51. Subsection (a), Section 18, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by Chapters 242 and 391, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The group benefits advisory committee is composed of 27 ~~[25]~~ voting members as provided by this section. The office of the attorney general, the office of the state treasurer, the office of the comptroller, the Railroad Commission of Texas, the General Land Office, and the Department of Agriculture are entitled to be represented by one member each on the committee, who may be appointed by the governing body of the state agency or elected by and from the employees of the agency, as

determined by rule by the governing body of the agency. One employee shall be elected from each of the remaining ~~eight~~ seven largest state agencies that are governed by appointed officers by and from the employees of those agencies. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be an expert in employee benefit issues from the private sector, appointed by the governor. One member shall be an expert in employee benefits issues from the private sector, appointed by the lieutenant governor. One member shall be a retired state employee appointed by the trustee. One member shall be a state employee of a state agency other than one of the ~~eight~~ seven largest state agencies, appointed by the trustee. Not more than one employee from a particular state agency may serve on the committee. ~~Each of the seven largest institutions of higher education, as determined by the number of employees on the payroll of an institution, shall elect one member of the committee from among persons who have each been nominated by a petition signed by at least 300 employees. Two [members shall be employees of institutions of higher education appointed by the Texas Higher Education Coordinating Board. Five] members shall be employees of institutions of higher education, other than the seven largest institutions of higher education, who are appointed by the Texas Higher Education Coordinating Board [elected by and from the institutions of higher education], but not more than one employee shall be from any one institution. [The remaining members shall be elected by and from the employees of the other state agencies, excluding institutions of higher education, and from the employees of participating school districts in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or district.]~~ The members shall elect a presiding officer from their membership to serve a one-year term.

SECTION 52. Subsections (b) and (c), Section 19, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(b) A surviving spouse of an employee or a retiree who is entitled to monthly benefits paid by a retirement system named in this Act may, following the death of the employee or retiree, elect to retain the spouse's authorized coverages and also retain authorized coverages for any dependent of the spouse, at the group rate for employees, provided such coverage was previously secured by the employee or retiree for the spouse or dependent, and the spouse directs the applicable retirement system to deduct required contributions from the monthly benefits paid the surviving spouse by the retirement system. A surviving dependent of a retiree who was receiving monthly benefits paid by a retirement system named in this Act may, after the death of the retiree and if the retiree leaves no surviving spouse, elect to retain any coverage previously secured by the retiree, at the group rate for employees, until the dependent becomes ineligible for coverage for a reason other than the death of the member of the group. A dependent who makes an election under this subsection and who is entitled to monthly benefits from a retirement system named in this Act based on

the service of the deceased retiree must direct the applicable retirement system to deduct required contributions for the coverage from the monthly benefits paid the surviving dependent by the retirement system.

(c) The surviving spouse of an employee or a retiree who designated or selected a time certain annuity option or a surviving dependent of a retiree who designated or selected a time certain annuity option, upon expiration of the annuity option may retain authorized coverages by advance payment of contributions to the Employees Retirement System of Texas under rules and regulations adopted by the trustee.

SECTION 53. Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended by adding Section 3 to read as follows:

Sec. 3. (a) A state agency may permit some or all of the employees of the agency to participate in an employer-sponsored program described by Section 457(f) of the Internal Revenue Code of 1986, including subsequent amendments of that law.

(b) Before a state agency begins sponsorship of a program under Subsection (a) of this section, the agency shall submit a proposal for the program to the Employees Retirement System of Texas for its review and comment.

(c) In this section, "state agency" means a board, office, commission, department, institution, court, or other agency in any branch of state government.

SECTION 54. Subsection (c), Section 141, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The fee for compulsory inspection of a motor vehicle other than a moped, to be made under this Section, shall be Ten Dollars and Fifty Cents (\$10.50). The fee for compulsory inspection of a moped, to be made under this Section, shall be Five Dollars and Seventy-five Cents (\$5.75). Five Dollars and Fifty Cents (\$5.50) of each fee shall be paid to the Department and shall, except as provided by ~~[Section 815.405, Government Code, or]~~ Section 382.0622, Health and Safety Code, be deposited ~~[placed]~~ in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law, after the deduction of Two Dollars and Twenty-five Cents (\$2.25) of each fee, which shall be deposited by the Department in the general revenue fund. The Department may require each official inspection station to make an advance payment of Five Dollars and Fifty Cents (\$5.50) for each inspection certificate furnished to it. ~~No[, and the money so received shall, except as provided by Section 815.405, Government Code, be placed in the Motor Vehicle Inspection Fund, and no]~~ further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of Five Dollars and Fifty Cents (\$5.50) for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department. The Texas Natural Resource Conservation Commission shall refund to the Department Two Dollars (\$2.00) for each unused certificate returned to the



Department by inspection stations licensed by the Department. An inspection station may waive the fee otherwise due from the owner of a vehicle inspected under this Section if the inspection station has rendered in advance to the Department the payment of Five Dollars and Fifty Cents (\$5.50) for the certificate applied to a vehicle with respect to which the owner's fee has been so waived.

SECTION 55. Subsection (c-4), Section 10, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-10, Vernon's Texas Civil Statutes), is amended to read as follows:

(c-4) On Monday of each week each County Tax Collector shall submit to the State Department of Highways and Public Transportation a carbon copy of the receipt issued for payment of each fee received in the preceding week for registration of a log loader vehicle under Section 2(l) of this Act ~~and all~~ ~~[On Monday of each week the County Tax Collector shall send to the Employees Retirement System of Texas an amount equal to four percent (4%) of the registration fees collected under Section 2(l) of this Act [and shall remit the remaining ninety-six percent (96%) to the Department. Money sent to the retirement system under this subsection shall be deposited in the law enforcement and custodial officer supplemental retirement fund].~~

SECTION 56. The following provisions are repealed:

(1) Subsection (d), Section 813.509, and Sections 815.005, 815.106, 815.305, 815.316, 815.320, 815.405, 839.104, and 840.009, Government Code;

(2) Paragraphs (19), (20), (21), and (22), Subsection (a), Section 3, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as added by Chapter 391, Acts of the 72nd Legislature, Regular Session, 1991;

(3) Section 3A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as added by Chapter 391, Acts of the 72nd Legislature, Regular Session, 1991;

(4) Section 13C, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code);

(5) Subsection (e), Section 15, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code);

(6) Subsection (d), Section 16, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code); and

(7) effective September 1, 1995, Subsection (d), Section 813.506, Government Code.

SECTION 57. The Employees Retirement System of Texas may adopt rules to implement the changes in law made by this Act in the composition of the group benefits advisory committee under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code).

SECTION 58. The Legislative Budget Board shall perform a study of the law enforcement and custodial officer supplemental retirement fund and the program supported by that fund. The study shall include an examination of the membership in the program, including its potential for

growth, and an examination of appropriate methods of financing the program. The board shall include its findings and recommendations as a result of the study in a report to the 74th Legislature.

SECTION 59. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1993.

(b) This section and Sections 2 and 30 of this Act take effect immediately. Sections 22 and 23 of this Act take effect September 1, 1995.

SECTION 60. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2714**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2714** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE

ELLIS

SHELLEY

BROWN

HENDERSON

On the part of the Senate

BAILEY

YARBROUGH

ECKELS

BOSSE

DE LA GARZA

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 578**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 578** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO  
ARMBRISTER  
MONTFORD  
MADLA

On the part of the Senate

DANBURG  
HIGHTOWER  
BOMER  
SAUNDERS

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1113**

Senator Parker submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1113** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PARKER  
ELLIS  
HARRIS OF DALLAS  
HARRIS OF TARRANT

On the part of the Senate

RUDD  
WOLENS  
BRIMER  
DUNCAN  
DUTTON

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1776**

Senator Patterson submitted the following Conference Committee Report:

Austin, Texas  
May 27, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1776** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PATTERSON

BROWN

SHAPIRO

ARMBRISTER

On the part of the Senate

WILSON

CARTER

OAKLEY

ALLEN

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 673**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 673** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONCRIEF

ROSSON

CARRIKER

PARKER

On the part of the Senate

COUNTS

CAIN

BERLANGA

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the continuation and operation of the State Board of Dental Examiners and to the regulation of the practice of dentistry and dental hygiene; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 4543a, Revised Statutes, is amended by amending Sections 1, 2, 3, and 4 and adding Sections 5 and 6 to read as follows:

Sec. 1. (a)(1) The State Board of Dental Examiners, also known as the Texas State Board of Dental Examiners, shall consist of 15 members. ~~Eight~~ ~~Ten~~ members must be reputable, practicing dentists who have resided in the State of Texas and have been actively engaged in the practice of dentistry for five years ~~next~~ preceding their appointment, none of whom shall be members of the faculty of any dental or dental hygiene school or college or of the dental or dental hygiene department of any medical school or college or shall have a financial interest in any such school or college. Two members must be reputable, practicing dental hygienists who have resided in the State of Texas and have been actively engaged in the practice of dental hygiene for five years ~~next~~ preceding the appointment, who are not licensed to practice dentistry in this state, and who shall not be a member of the faculty of any dental or dental hygiene school or college or of the dental or dental hygiene department of any medical school or college or shall have a financial interest in any such school or college. ~~Five~~ ~~Three~~ members must be members of the general public. A person is not eligible for appointment as a member if the person:

(A) has ever had his license to practice dentistry or dental hygiene revoked by the Board, provided that the revocation has not been subsequently overturned by final order of a court of law, based upon acts which, in the opinion of the Board, violated any provision of the statutes of the State of Texas relating to the practice of dentistry, dental hygiene, or any provision of this chapter; or

(B) is an adverse party in civil litigation against the Board.

(2) A person is not eligible for appointment as a public member if the person or the person's spouse:

(A) is ~~registered, certified, or~~ licensed by an occupational regulatory agency in the field of health care;

(B) is employed by or participates in the management of a business entity or other organization that is regulated by the Board or receives funds from the Board ~~[provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment]~~;

(C) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that is regulated by the Board or receives funds from the Board; ~~[provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or]~~

(D) uses or receives a substantial amount of tangible goods, services, or funds from the Board, other than compensation or

reimbursement authorized by law for Board membership, attendance, or expenses; or

(E) is employed by an individual serving as a member of the Board.

(b) Appointments to the Board shall be made without regard to the race, color, disability [~~creed~~], sex, religion, age, or national origin of the appointees. In making appointments under this section, the Governor shall attempt to appoint members of different minority groups including females, African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans.

(c) All members of the Board shall have full and identical privileges, except that only dentist members may participate in passing or failing applicants for a license to practice dentistry during the clinical portion of the Board examinations for dentists.

Sec. 2. The term of office of each member of said Board shall be limited to one six-year term or until their successors shall be appointed and qualify. Board terms are limited to one six-year term [~~except that this restriction shall not prohibit those Board members holding office on May 1, 1981, from being reappointed to one additional six-year term~~]. The terms shall be staggered with the terms of one-third of the members expiring every two years. The members of said Board shall be appointed by the Governor of the State. Before entering upon the duties of his office each member of the Board shall take the constitutional oath of office, same to be filed with the Secretary of State. The Governor shall designate one dentist member of the Board as chair of the Board to serve in that capacity at the pleasure of the Governor. At its first meeting the Board shall organize by electing one member [~~President and one~~] Secretary chosen to serve one year. Said Board shall hold regular meetings at least twice a year at such times and places as the Board shall deem most convenient for applicants for examination. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. The Board may prescribe rules and regulations, in harmony with the provision of this title governing its own proceedings and the examinations of applicants for the practice of dentistry. The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 3. (a) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the Board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a Board member and may not be a Board employee who is exempt from the state's position classification plan or is compensated at or above the

amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person may not serve as a member of the Board or act as general counsel to the Board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Board.

(d) For purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. [A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the dental industry. A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities on behalf of a trade or professional association in the profession regulated by the Board, may not serve as a member of the Board or act as the general counsel to the Board.]

Sec. 4. (a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Section 1 of this article for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Section 1 of this article for appointment to the Board;

(3) violates a prohibition established by Section 3 of this article;  
[or]

(4) fails to attend at least one-half of the regularly scheduled meetings that the member is eligible to attend during a calendar [held each] year, or

(5) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(c) If the Executive Director or any member of the Board has knowledge that a potential ground for removal exists, the Executive Director or member of the Board shall notify the Board of the ground. The Board shall then notify the Governor that a potential ground for removal exists [informed in writing of a violation that constitutes a ground under Subsection (a) of this section for the removal of a member of the Board, the Board shall include on the agenda of its next regularly scheduled meeting a review of the alleged violation. After review, the Board shall report its findings to the Governor for appropriate action consistent with Article XV, Section 9, of the Texas Constitution].

Sec. 5. (a) Each Board member shall comply with the Board member training requirements established by any other state agency that is given authority to establish the requirements for the Board.

(b) The Board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 6. (a) The Board shall establish a training program for the members of the Board.

(b) Before a member of the Board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

- (1) the enabling legislation that created the Board;
- (2) the programs operated by the Board;
- (3) the role and functions of the Board;
- (4) the rules of the Board with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the Board;
- (6) the results of the most recent formal audit of the Board;
- (7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the Board shall consult with the governor's office and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the Board shall allow that training in lieu of developing its own program.

SECTION 2. Article 4543b, Revised Statutes, is amended to read as follows:

Art. 4543b. Sunset Provision. The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2005 [1993].



SECTION 3. Sections 1 and 5, Article 4544, Revised Statutes, are amended to read as follows:

Sec. 1. (a) It shall be the duty of the Board to provide for the examination of [examine] all applicants for license to practice dentistry in this State. Each person applying for an examination shall pay to said Board a fee set by the Board and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination provided for [given] by said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology, Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the Board may in its discretion require. The examination shall be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require. The Board shall contract with an independent or regional testing service for any required clinical examination. In the event that the Board uses a regional testing service, the Board is authorized to contract for or otherwise use the services of licensed dentists in this state for the purpose of providing assistance to the regional testing service. The Board shall have the written portion of the examination validated by an independent testing professional.

(b) The Board by rule shall set the number of and conditions for examination retakes. The Board may require an applicant who fails the examination to meet additional education requirements set by the Board.

Sec. 5. (a) The Board shall develop a mandatory continuing education program.

(b) The Board by rule shall:

(1) establish the minimum hours of continuing education required for license renewal;

(2) identify the key factors that lead to the competent performance of professional duties under this Act;

(3) develop a process to evaluate and approve continuing education courses; and

(4) develop a process to assess a licensee's participation and performance in continuing education courses that will enable the Board to evaluate the overall effectiveness of the program.

(c) The Board is authorized to assess the continuing education needs of licensees and may require licensees to attend continuing education courses specified by the Board [may recognize, prepare, or carry out continuing education programs for persons it licenses or certifies. Participation in the programs is voluntary].

SECTION 4. Article 4545a, Revised Statutes, is amended to read as follows:

Art. 4545a. LICENSING BY CREDENTIALS; LICENSING OF FOREIGN-TRAINED DENTISTS [RECIPOCAL ARRANGEMENTS].

Sec. 1. (a) The State Board of Dental Examiners [may, in the discretion of the Board in each instance], upon payment by the applicant

[for registration] of a fee set by the Board, shall grant a license to practice dentistry or dental hygiene to any reputable dentist or dental hygienist who:

(1) is licensed in good standing as a dentist or dental hygienist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) has not been the subject of final or pending disciplinary action in any state in which the dentist or dental hygienist is or has been licensed;

(3) has graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;

(4) has passed a national or other examination recognized by the Board relating to dentistry or dental hygiene;

(5) has successfully completed the Board's jurisprudence examination;

(6) has submitted documentation of current cardiopulmonary resuscitation certification; and

(7) has practiced dentistry or dental hygiene:

(A) for a minimum of five years immediately prior to applying;

(B) as a dental educator for a minimum of five years; or

(C) has completed two years of obligated service in the state under the National Health Service Corps or other federal scholarship or loan repayment program.

(b) The Board must complete the processing of an application for a license not later than the 180th day after all documentation and examination results required by this section have been received by the Board or grant a license to the applicant.

Sec. 2. (a) The Board, upon payment by the applicant of a fee set by the Board, shall grant a license to a dentist or dental hygienist who has not graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association if:

(1) the dentist or dental hygienist has practiced for a minimum of five years immediately prior to applying;

(2) the dentist or dental hygienist has not been the subject of final or pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;

(3) the Board, through a procedure adopted by rule, has determined that the educational qualifications are equivalent to those required to practice dentistry or dental hygiene in the state; and

(4) the dentist or dental hygienist has completed all examinations required by the Board for licensure.

(b) The Board must complete the processing of an application for a license not later than the 180th day after all documentation, the determination of educational equivalency, and examination results required by this section have been received by the Board or grant a license to the

~~applicant [license to practice dentistry to any reputable dentist who is a graduate of a reputable dental college or has qualified on examination for the certificate of dental qualification for a commission as a dentist in the Armed Forces of the United States and to licentiates of other States or territories having requirements for dental registration and practice equal to those established by this law. Applications for license under the provisions of this Article shall be in writing and upon a form to be prescribed by the State Board of Dental Examiners. Said application shall be accompanied by a diploma or a photograph thereof, awarded to the applicant by a reputable dental college, or a certified transcript of the certificate or license or commission issued to the applicant by the Armed Forces of the United States, or by a license or a certified copy of license to practice dentistry, lawfully issued to the applicant by some other State or territory; and shall also be accompanied by an affidavit from an executive officer of the Armed Forces of the United States, the President or Secretary of the Board of Dental Examiners who issued the said license, or by a legally constituted dental registration officer of the State or territory in which the certificate or license was granted upon which the applications for dental registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked except by honorable discharge by the Armed Forces of the United States; and that the statement of qualifications made in the application for dental registration in Texas is true and correct. Applicants for license under the provisions of this Article shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced dentistry in the State or territory from which the applicant removed, was at the time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate, license, or commission and the said dental diploma were issued, and that no proceeding was pending at the time of such removal, or is at the present time pending against the applicant for the cancellation of such certificate, license or authority to practice dentistry in the State or territory in which the same was issued, and that no prosecution was then, or is at the time of the application, pending against the applicant in any State or Federal Court for any offense which under the law of Texas is a felony].~~

SECTION 5. Subsection (a), Section 1, Article 4548f, Revised Statutes, is amended to read as follows:

(a) It shall be unlawful for any person, firm, or corporation to engage in false, misleading, or deceptive advertising arising out of or in connection with the practice of dentistry. The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name, except a rule may require that an advertisement under a trade name include the name or names of the dental owner or owners of the practice. [Provided; however, nothing herein shall be construed to restrict or prohibit:

[(1) the type of advertising medium;

[(2) the size or duration of any advertisement;

[(3) the truthful advertising of prices for any type of dental services;

[(4) the use of agents or employees in advertising;

[(5) a person's personal appearance or use of his personal voice in an advertisement.]

SECTION 6. Article 4548h, Revised Statutes, is amended to read as follows:

Art. 4548h. COMPLAINTS; REFUSING, REVOKING, CANCELLING, AND SUSPENDING LICENSES

Sec. 1. (a) [AUTHORITY TO GRANT LICENSE:] The State Board of Dental Examiners shall keep an information file about each complaint filed with the Board. The Board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the Board that the Board has authority to resolve, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The Board by rule shall adopt a form to standardize information concerning complaints made to the Board. The Board by rule shall prescribe information to be provided to a person when the person files a complaint with the Board.

(d) The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.

(e) The Board shall adopt rules concerning the investigation of a complaint filed with the Board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) require that all investigators used by the Board shall be state employees.

(f) The Board shall dispose of all complaints in a timely manner. The Board shall establish a schedule for conducting each phase of a complaint that is under the control of the Board. The schedule shall be kept in the information file for the complaint. A change in the schedule must be noted in the complaint information file.

(g) The Executive Director of the Board shall notify the Board of the number of complaints that extend beyond a two-year time frame for resolution. The Executive Director shall provide the Board with an explanation of the reasons that the complaints have not been resolved. The notice and explanation required shall be provided to the Board periodically at regularly scheduled Board meetings.

(h) The Board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(i) Rules adopted under this section must provide the complainant, where applicable and permitted by law, an opportunity to be heard, must provide the licensee an opportunity to be heard, and must require the presence of an attorney to advise the Board or the Board's employees. The attorney must be a member of the Board's legal staff, if the Board has a legal staff. If the Board does not have a legal staff, the attorney must be an employee of the office of the attorney general.

(j) The Board by rule shall develop a system for monitoring license holders' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the Board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public [be and they are hereby authorized to refuse to grant a license to practice dentistry to any person or persons who have been guilty, in the opinion of said Board, of violating any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry, or any provisions of Chapter 9, Title 71, Revised Civil Statutes of Texas, 1925, as amended, within twelve (12) months prior to the filing of an application for such license].

Sec. 2. [REVOCACTION, CANCELLATION, OR SUSPENSION OF LICENSE:] (a) The [State] Board [of Dental Examiners] shall revoke, cancel or suspend any license or licenses that may have been issued by such Board, place on probation a person whose license has been suspended, or reprimand a licensee if in the opinion of a majority of such Board, any person or persons to whom a license has been issued by said Board to practice dentistry or dental hygiene in this State, shall have, after the issuance of such license, violated any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry or dental hygiene in this State, or any of the provisions of Chapter 9, Title 71, Revised Civil

Statutes of Texas, 1925, as amended, or any amendments that may hereafter be made thereto, or a rule of the Board. All revocations, cancellations or suspensions of licenses by the ~~[Texas State] Board [of Dental Examiners]~~ shall be made in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) All complaints to be considered by the Board under this article shall be made in writing ~~and[, subscribed and sworn to by the person presenting such complaint, which complaint]~~ shall set out the alleged violations of such Statutes or rules ~~[and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes].~~

(c) All complaints under this article as received shall be filed with the Secretary of the Board or an authorized employee of the Board. All complaints filed with the Board shall be reviewed to determine jurisdiction, and if jurisdiction exists ~~[When a complaint is made by a member of the Board, its agents or employees],~~ the Secretary of the Board or designee ~~[shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative]~~ shall cause an investigation of such complaint to be made to determine the facts in such case. If ~~[, and if]~~ the facts as determined by such investigation ~~[in the discretion of the Secretary of the Board,]~~ justify further action, the disposition of the complaint shall comply with this article ~~[the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes].~~

(d) If a licensee suspension is probated, the Board may require the practitioner:

(1) to report regularly to the Board on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the Board; or

(3) to continue or review professional education until the practitioner attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation.

(e) If the Board or an executive committee of the Board determines from the evidence or information presented to it that a person licensed under this Act by continuation in practice would constitute a clear, imminent or continuing threat to a person's physical health or well-being, the Board or the executive committee of the Board shall temporarily suspend the license of that person. The license may be suspended under

this section without notice or hearing on the complaint, provided institution of proceedings for a hearing held by the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension. A hearing shall be held not later than fourteen (14) days after the date of the suspension unless a continuance is requested by the licensee. A second hearing on the suspension shall be held by the State Office of Administrative Hearings within sixty (60) days after the date the suspension was ordered or after the date specified in the continuance requested by the licensee. The time requirements in this subsection must be adhered to or the suspension is lifted without further order or action.

(f) All complaints considered by the Board must be filed with the Board within four (4) years after the date on which the act occurred or within four (4) years after a complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act.

Sec. 3. ~~[APPEAL TO COURT:]~~ (a) A person aggrieved by a ruling, order, or decision of the Board under this article has the right to appeal to a district court in the county of his residence or in the county where the alleged offense occurred within thirty (30) days from the service of notice of the action of the [State] Board ~~[of Dental Examiners]~~.

(b) The appeal having been properly filed, the court may request of the Board and the Board on receiving the request shall within thirty (30) days prepare and transmit to the court a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with the Texas Rules of Civil Procedure.

(c) ~~[In the event an appeal is taken by a licensee, the appeal shall act as a supersedeas providing the appealing party files a bond as the court may direct, and the court shall dispose of the appeal and enter its decision promptly.]~~

~~(d)~~ If an aggrieved person fails to perfect an appeal as provided in this section, the Board's ruling shall become final.

~~(d)~~ ~~(e)~~ Review by the court shall be by the substantial evidence rule and not de novo.

(e) The court may, in its discretion, permit a person who files an appeal under this section to stay enforcement of penalty or punishment by giving to the court a supersedeas bond that is approved by the court, unless there is a finding of clear, imminent or continuing harm to a person's physical health or well-being by the State Office of Administrative Hearings under Section 2(e) of this article. If the court sustains the occurrence of the violation, the court may uphold the amount of penalty or punishment assessed or may reduce the amount of penalty or punishment assessed. If the court does not sustain the occurrence of the violation, the court shall order that no penalty or punishment is assessed.

Sec. 4. ~~[ADDITIONAL OFFICES:]~~ No statute relating to the practice of dentistry in this State shall be construed to prohibit any duly authorized, licensed, and registered dentist from maintaining any number of offices in this State, provided said dentist assumes full legal responsibility and liability for the dental services rendered in such offices and further provided that the dentist complies with such requirements as may be prescribed by the Board in its Rules ~~[and Regulations]~~ for the purpose of

protecting the health and safety of the patients receiving dental care at such offices.

SECTION 7. Article 4548i, Revised Statutes, is amended to read as follows:

Art. 4548i. PUNISHMENT. (a) Any person who shall violate any provision of Chapter Nine, Title 71, Revised Statutes, commits an offense. An offense under this section is a Class A misdemeanor. If it is shown at a trial of an offense under this section that the defendant was previously convicted under this section of any misdemeanor or the offense involves practicing without an appropriate license issued by the Board, the offense is a felony of the third degree. Each day of such violation shall be a separate offense.

(b) Any person who shall violate a provision of Chapter Nine, Title 71, Revised Statutes, is liable to the state for a civil penalty in an amount not to exceed \$2,500. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. On request of the Board, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty. A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 8. Chapter 9, Title 71, Revised Statutes, is amended by adding Article 4548j to read as follows:

Art. 4548j. ADMINISTRATIVE PENALTY. (a) The Board may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The Executive Director of the Board or a subcommittee of the Board shall determine the amount of the penalty based on a standardized penalty schedule. Any subcommittee of the Board shall consist of at least one public member of the Board. The penalty schedule shall be developed by the Board, through rule, and shall be based on the following criteria:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) An Executive Director or a subcommittee of the Board who determines that a violation has occurred may issue to the Board a report that states the facts on which the determination is based and the director's



or the subcommittee's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is approved by the Board, the Executive Director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a notice of all the alleged violations and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the Executive Director or subcommittee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the Executive Director or subcommittee, the Board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the Executive Director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the Board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the Board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the Board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of penalty;  
or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the Executive Director by certified mail.

(l) An Executive Director who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give the supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the Executive Director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the Board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the Dental Registration Fund in the general revenue fund. These funds may only be used to fund an approved peer assistance program.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(s) Nothing in this article shall be construed as preventing the board from assessing an administrative penalty using an informal proceeding governed by the requirements in Article 4548h, Revised Statutes.

SECTION 9. Article 4549, Revised Statutes, is amended to read as follows:

Art. 4549. REFUSAL TO EXAMINE OR ISSUE LICENSE: JUDICIAL SUSPENSIONS AND REVOCATIONS ~~[DISCIPLINARY ACTIONS]~~

Sec. 1. The ~~[Texas]~~ State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a dental license or a dental hygienist license to any person for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a license or certificate.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry or dental hygiene.

(d) Proof of conviction of the applicant of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

(e) Proof that the applicant violated any of the provisions of the statutes of the State of Texas relating to the practice of dentistry or any provisions of Chapter 9, Title 71, Revised Statutes, and its subsequent amendments, within 12 months before the filing of an application for the license.

Sec. 2. ~~[The provisions of this Article relating to the suspension or revocation of a license do not apply to a person convicted of a felony under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, or Chapter 483, Health and Safety Code.~~

~~[Sec. 3.] The [Texas] State Board of Dental Examiners [and the District Courts of this State] shall have [concurrent] jurisdiction and authority, after notice and hearing [as hereinafter provided], to suspend or revoke a dental license or a dental hygienist license, to place on probation a person whose license or certificate is suspended, or to reprimand a licensee or certificate holder, and in addition to or in lieu of said suspension, revocation, probation, or reprimand, to assess an administrative penalty as provided for in Article 4548j, Revised Statutes, [a fine in an amount not to exceed \$2,500 payable to the dental registration fund] for any one or more of the following causes:~~

~~(a) Proof of insanity of the holder of a license or certificate, as adjudged by the regularly constituted authorities.~~

~~(b) Proof of conviction of the holder of a license or certificate of any felony or a misdemeanor involving fraud under the laws of this State or any other State or of the United States.~~

~~(c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dentistry or dental hygiene.~~

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license or certificate through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual intoxication or the use of drugs.

(g) That a dentist employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any State law relating to the regulation of dentists or dental hygienists.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing with safety to dental patients.

(l) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

(m) Proof of suspension, revocation, probation, reprimand, or other restriction by another State of a license or certificate to practice dentistry or dental hygiene based upon acts by the licensee or certificate holder enumerated in this section.

(n) That the holder thereof has knowingly provided or agreed to provide dental care in a manner which violates any provision of federal or State law regulating a plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any dental care services or regulating the business of insurance.

Sec. 3 [4]. (a) If the Board proposes to refuse to examine a person, [~~to suspend or revoke a license or certificate, to place on probation a person whose license or certificate has been suspended, or to reprimand a licensee or certificate holder,~~] the person is entitled to a hearing before the Board.

(b) The hearing under this section and an appeal from the hearing under this section are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

~~[Sec. 5. (a) All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes or rules and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes or rules.~~

~~[(b) All complaints as received shall be filed with the Secretary of the Board or an authorized employee of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board or its authorized employee shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made,~~

~~and shall mail a copy of such docketed complaint by registered or certified mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or rules. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board or its authorized employee, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board or its authorized employee shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered or certified mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or rules.~~

~~[(c) The Board shall keep an information file about each complaint filed with the Board relating to a licensee or certificate holder. If a written complaint is filed with the Board relating to a licensee or certificate holder, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.~~

~~[(d) The Board may request a dental peer review or grievance committee to submit information to the Board about the activities of the committee.~~

~~[Sec. 6. If said Board shall make and enter any order revoking or suspending any person's license or certificate, placing a person on probation, or reprimanding a person as hereinabove provided, the person may take an appeal to the District Court of the County of the residence of the person by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the Texas State Board of Dental Examiners, as defendants.~~

~~[Sec. 7. Proceedings before the District Courts of this State shall be as follows:~~

~~[It shall be the duty of the several District and County Attorneys of this State, on the request of any member of the Texas State Board of Dental Examiners or by complaint presented to any District Court of the State or county in which such alleged offense occurred, to file and prosecute appropriate judicial proceedings in the name of the State against the person or persons alleged to have so violated such Statute. Such complaint shall be made in writing and filed in the District Court of the State or county in which the alleged offense occurred, and such complaint shall distinctly set forth the charges and grounds thereof and shall be subscribed and sworn to. When such complaint is made by any County or District Attorney, as herein provided, it shall be subscribed and sworn to by the prosecutor and shall be filed with the Clerk of the Court. The Court, upon the filing of said complaint, shall order the accused dentist to~~

~~show cause why his license to practice dentistry in this State shall not be suspended or revoked:~~

~~[Citation therein shall be issued in the name of the State of Texas and in manner and form as in other cases and the same shall be served upon the defendant at least twenty (20) days before the trial date set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) persons shall be summoned as in cases during term time of the court when no regular jury is available and as prescribed by law and shall be impanelled unless waived by the defendant, and the cause shall be tried in like manner as in other civil cases. If the said accused dentist be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the Court may by proper order entered on the minutes, suspend his license for a time or revoke and cancel it entirely and may also give proper judgment of cost, from which order an appeal may be taken to the Court of Civil Appeals as in other civil cases.]~~

SECTION 10. Article 4549b, Revised Statutes, is amended to read as follows:

Art. 4549b. CONSUMER INFORMATION. (a) The Board shall prepare information of public [consumer] interest describing the [regulatory] functions of the Board and [describing] the Board's procedures by which [consumer] complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(b) The Board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board. The Board may provide for that notification:

(1) on each registration form, application, brochure, or written contract for services of an individual or entity regulated under this Act;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

(3) in a bill for service provided by an individual or entity regulated under this Act.

(c) The Board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

SECTION 11. Sections 1, 2, and 4, Article 4550a, Revised Statutes, are amended to read as follows:

Sec. 1. It shall be the duty of all persons holding a dental license or dental hygienist license issued by the State Board of Dental Examiners, to annually apply and to be registered as such practitioners with the State Board of Dental Examiners on or before March 1st of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee as determined by said Board according to the needs of said Board, such payment to be made by each person to such Board, and every person so registering shall file

with said Board a written application setting forth such facts as the Board may require. A person holding a dental hygienist license must attach to the application proof of current certification ~~[that the person has successfully completed a course]~~ in cardiopulmonary resuscitation given or approved by the American Heart Association or American Red Cross ~~[not earlier than one year before the date on which the license must be renewed]~~ or, in the event that the person is not physically capable of successfully completing such training, a written statement executed by either a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross that describes such physical incapacity. In lieu of this requirement for annual cardiopulmonary resuscitation certification, a dental hygienist licensed by the Texas State Board of Dental Examiners and residing in a country other than the United States may satisfy this requirement by submitting proof of residence upon the annual date of renewal. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable, that the applicant holds a valid license or certificate to practice in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided, that the filing of such application, the payment of such fee, and the issuance of such receipt therefor, shall not entitle the holder thereof to lawfully practice within the State of Texas unless he in fact holds a license or certificate as such practitioner issued by the State Board of Dental Examiners, as provided by this law, and unless said license or certificate is in full force and effect; and provided further, that in any prosecution for unlawful practice such receipt showing payment of the annual registration fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice.

Sec. 2. (a) If any person required to register as a practitioner under the provisions hereof shall fail or refuse to apply for such registration and pay such fee on or before the specified date ~~[March 1st]~~ of each calendar year, as hereinabove set forth, his license or certificate to practice issued to him, shall thereafter stand suspended so that thereafter in practicing he shall be subject to the penalties imposed by law upon any person unlawfully practicing.

(b) A person may renew an unexpired license or certificate by paying to the Board before the expiration of the license or certificate the required renewal fee.

(c) If a person's license or certificate has been expired for not longer than ninety (90) days, the person may renew it by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license or certificate.

(d) If a person's license or certificate has been expired for longer than ninety (90) days but less than one year ~~[two years]~~, the person may renew it by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license or certificate.

(e) If a person's license or certificate has been expired for one year ~~[two years]~~ or longer, the person may not renew it, except as provided by

Section 2A of this article. The person may obtain a new license or certificate by submitting to reexamination and complying with the requirements and procedures for obtaining an original license or certificate. However, the Board may adopt rules providing for renewal without reexamination of an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the Board a fee that is equal to the examination fee for the license.

(f) At least thirty (30) days before the expiration of a person's license, the [The] Board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the Board [must notify each licensee in writing of that licensee's impending license expiration 30 days prior to said expiration and shall attempt to obtain from the licensee signed receipt confirming receipt of notification].

(g) Provided, however, that the requirements governing the payment of the annual registration fees and penalties for late registration shall not apply to licensees who are on active duty with the Armed Forces of the United States of America, and are not engaged in private or civilian practice.

(h) The Board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on March 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 4. (a) To aid the Board in performing its duties, the Board is hereby authorized to employ an Executive ~~Secretary or~~ Director who shall receive a salary to be fixed by the Board, and who shall make and file a surety bond in a sum not less than Five Thousand Dollars (\$5,000) conditioned for the faithful performance of all the duties of ~~the~~ ~~his~~ office and the safekeeping and proper disbursement of said "Dental Registration Fund" and all other funds received by the Executive Director ~~[coming into his hands]~~; such salary shall be paid out of said "Dental Registration Fund" and shall not be in any way a charge upon the general revenue of the State. The Executive Director, with the consent of the Board, may employ an Assistant Executive Director who shall perform all the duties required by law to be performed by the Executive Director when said Executive Director is absent or unable to act for any reason. Said Board shall employ and provide such other employees as may be needed to assist the Executive ~~Secretary or~~ Director in performing the Executive Director's ~~his~~ duties and in carrying out the purposes of this Act, provided that their compensation shall be paid only out of the said "Dental Registration Fund." All disbursements from "Dental Registration Fund" shall be made only upon the written approval of the President of the Board, Secretary of said Board, or an employee designated by the Board and upon warrants drawn by the Comptroller to be paid out of said fund.



(b) The Executive Director or ~~the Executive Director's~~ ~~[his]~~ designee shall develop ~~[within one year of the effective date of this Act]~~ an intraagency career ladder program. ~~The program shall require[one part of which shall be]~~ the intraagency posting of all nonentry level positions ~~concurrently with [for at least ten (10) days prior to]~~ any public posting.

(c) The Executive Director or ~~the Executive Director's~~ ~~[his]~~ designee shall develop ~~[within one year of the effective date of this Act]~~ a system of annual performance evaluations. ~~All [based on measurable job tasks. Within two years of the effective date of this Act all]~~ merit pay ~~for Board employees [authorized by the Executive Director]~~ must be based on the system established under ~~[by]~~ this section.

(d) ~~The Executive Director or the Executive Director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:~~

~~(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;~~

~~(2) a comprehensive analysis of the Board work force that meets federal and state guidelines;~~

~~(3) procedures by which a determination can be made of significant underutilization in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

~~(4) reasonable methods to appropriately address those areas of significant underutilization.~~

~~(e) A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subdivision (1) of Subsection (d) of this section, and be filed with the governor's office.~~

~~(f) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.~~

~~(g) The Board shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Board.~~

~~(h) The Board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the Board's programs. The Board shall also comply with federal and state laws for program and facility accessibility.~~

~~(i) The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.~~

SECTION 12. Subsection (c), Section 3, Article 4550a, Revised Statutes, is amended to read as follows:

(c) ~~The [On or before the first day of January each year, the]~~ Board shall ~~file annually with [make in writing a complete and detailed report~~

~~accounting for all funds received and disbursed by the Board/commission during the preceding year to~~ the governor and ~~with~~ [to] the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 13. Section (b), Article 4551, Revised Statutes, is amended to read as follows:

(b) The Board shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering [for the administration of] this Act [in amounts not to exceed:

- ~~[(1) dental examination fee: \$150;~~
- ~~[(2) dental hygiene examination fee: \$75;~~
- ~~[(3) annual renewal fees:~~
  - ~~[dentists: \$100;~~
  - ~~[dental hygienists: \$70;~~
  - ~~[dental labs: \$125;~~
- ~~[(4) reciprocal registration fee: \$200;~~
- ~~[(5) duplicate license fee: \$15;~~
- ~~[(6) duplicate registration certificates: \$15].~~

The Board ~~may not set a fee at an amount less than the amount of that fee on September 1, 1993~~ [shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement].

SECTION 14. Section 4A, Chapter 475, Acts of the 52nd Legislature, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4A. DENTAL HYGIENE ADVISORY COUNCIL [COMMITTEE].

(a) The Dental Hygiene Advisory Council [Committee] is hereby established.

(b) The Dental Hygiene Advisory Council [Committee] shall be composed [consist] of six [not more than eight] dental hygienists, three appointed by the governor and three appointed by the State Board of Dental Examiners to staggered six-year terms [Texas State Board of Dental Examiners. A member of such advisory committee shall serve for a term of three years expiring on May 1 of the third year of the member's term. After the expiration of a member's term, the member shall continue to serve until the date a successor is appointed and has qualified. A person may not be appointed to serve for more than one full term].

(c) The advisory council [committee] shall advise the [Texas] State Board of Dental Examiners on matters relating to dental hygiene. In order to assure that the advisory council [committee] is able to exercise properly its advisory powers, the [Texas] State Board of Dental Examiners shall provide the advisory council [committee] with timely notice of all Board meetings and a copy of the minutes of all Board meetings. In addition, the Board shall not adopt any rule relating to the practice of dental hygiene unless said proposed rule has been submitted to the advisory council [committee] for review and comment at least thirty (30) days prior to the adoption of said rule.

(d) A member of the advisory council [~~committee~~] is entitled to the compensatory per diem set by the General Appropriations Act for each day that the member engages in council [~~committee~~] business. Except for transportation expenses, a member is not entitled to reimbursement for travel expenses. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

SECTION 15. Section 5, Chapter 475, Acts of the 52nd Legislature, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. EXAMINATION. The [~~Texas~~] State Board of Dental Examiners shall hold meetings at such times and places as the Board shall designate for the purpose of examining qualified applicants for licensure as dental hygienists in this State. All applicants for examination shall pay a fee set by the Board to said Board as determined by said Board according to its needs and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. An applicant must attach to the application proof that the applicant has successfully completed a current course in cardiopulmonary resuscitation given or approved by the American Heart Association or American Red Cross [~~not earlier than one year~~] before the date on which the applicant submits the application or, in the event that the applicant is not physically capable of successfully completing such training, a written statement executed by either a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross that describes such physical incapacity. The Board shall have authority to employ the services of such examiners and clerks as may be needed to aid the Board in the performance of such duties. The examination shall be taken by all applicants on such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require. The examination shall be given orally or in writing, or by giving a practical demonstration of the applicant's skill or by any combination of such methods or subjects as the Board may in its discretion require. The Board shall grade each applicant upon the various phases of the examination and shall report such grades to the applicant within a reasonable time after such examination, and each applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a license permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

SECTION 16. Section (7), Article 4551f, Revised Statutes, is amended to read as follows:

Sec. (7). (a) In this section, "person" means an individual, corporation, association, partnership, or other private legal entity.

(b) A person other than a dental laboratory or dental technician may not fill a prescription for the preparation or repair of a dental prosthetic appliance that is to be delivered by a licensed dentist to a dental patient.

~~[At the time the dental prosthetic appliance is delivered to the dentist, the dental laboratory that prepared or repaired the appliance must provide the dentist its registration number as assigned by the Board and the expiration date of its certificate of registration. The dental laboratory must provide the number in writing.]~~

(c) A person may not offer or undertake to operate a dental laboratory or to provide the services described in Section (1) of this article unless the person holds a certificate of registration issued by the Board.

~~(d) At the time the dental prosthetic appliance is delivered to the dentist, the dental laboratory that prepared or repaired the appliance must provide the dentist its registration number as assigned by the Board and the expiration date of its certificate of registration. The dental laboratory must provide the number in writing.~~

~~(e) A dentist may not knowingly prescribe, order, or receive a dental prosthetic appliance that is to be prepared or has been prepared by an unregistered dental laboratory. [A dentist who violates this subsection commits an offense. Except as provided by Subsection (f) of this section, an offense under this subsection is a Class C misdemeanor.]~~

~~(f) [(e)] A person who violates a subsection [Subsection (b) or (c)] of this section commits an offense. An [Except as provided by Subsection (f) of this section, an] offense under Subsection (b) or (c) of this section is a third degree felony. An offense under Subsection (d) or (e) of this section [subsection] is a Class C misdemeanor.~~

~~(g) [(f)] If it is shown on the trial of an offense under this section that the defendant has previously been convicted under Subsections (d) and (e) of this section, an offense [under this section] is a Class A misdemeanor.~~

SECTION 17. Chapter 9, Title 71, Revised Statutes, is amended by adding Article 4551n to read as follows:

Art. 4551n. EMPLOYMENT OF DENTISTS. (a) The Board shall, on a form and under rules adopted by the Board, approve and certify any health organization to employ dentists upon application by the organization and presentation of satisfactory proof to the Board that the organization:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and its subsequent amendments and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(2) is organized and operated as a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b, 254c, or 256, to contract with or employ dentists licensed by the Board.

(b) Any dentist providing dental services under Subsection (a) of this section shall provide those services free of charge or at a reduced fee commensurate with the patient's ability to pay in strict compliance with the applicable provisions of 42 U.S.C. Section 254b, 254c, or 256.

(c) The Board may, at its discretion, refuse to approve or certify any such health organization making application to the Board if in the Board's determination the applying nonprofit corporation is established or organized or operated in contravention to or with the intent to circumvent any provision of this Act.

SECTION 18. Section (b), Article 4551d, Revised Statutes, is repealed.

SECTION 19. (a) This Act takes effect September 1, 1993.

(b) As the terms of members of the State Board of Dental Examiners expire or as vacancies on the board occur, the governor shall appoint members to the board to achieve, as soon as possible, the membership plan prescribed for the board by Article 4543a, Revised Statutes, as amended by this Act.

(c) The changes in law made by this Act in the qualifications of and the prohibitions applying to members of the State Board of Dental Examiners do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to hold office on the board for the term for which the member was appointed. The changes in law apply only to a member appointed on or after September 1, 1993.

(d) As soon as possible on or after the effective date of this Act, the governor and the State Board of Dental Examiners shall each appoint three members to the Dental Hygiene Advisory Council. In making the appointments, the governor and the board shall each designate one member for a term expiring February 1, 1995, one member for a term expiring February 1, 1997, and one member for a term expiring February 1, 1999.

(e) The current Dental Hygiene Advisory Committee established under Section 4A, Chapter 475, Acts of the 52nd Legislature, 1951 (Article 4551e, Vernon's Texas Civil Statutes), shall continue to advise the State Board of Dental Examiners until the governor and the board appoint a quorum of members of the Dental Hygiene Advisory Council. At that time the Dental Hygiene Advisory Committee is abolished and the new council assumes its duties.

(f) The changes in law made by this Act relating to a penalty that may be imposed apply only to a violation of the Dental Practice Act (Article 4543 et seq., Revised Statutes) or a rule adopted by the State Board of Dental Examiners that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for this purpose.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON SENATE BILL 987

Senator Turner submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 987 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TURNER  
WENTWORTH  
ZAFFIRINI  
LUNA  
SIMS

On the part of the Senate

KRUSEE  
CARTER  
CHISUM  
COMBS  
B. TURNER

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the service area for a municipal drainage utility system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (8), Section 402.044, Local Government Code, is amended to read as follows:

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor may a service area of one municipality extend into the boundaries of another incorporated town, city, or municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

(A) a municipality of more than 400,000 population located in one or more counties of less than 600,000 population according to the most recent federal census; or

(B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Water Commission.

SECTION 2. Section 402.053, Government Code, is amended by adding Subsection (d) to read as follows:

(d) A municipality may exempt property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Tax Code, from drainage charges under this subchapter.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 680**

Senator Turner submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 680** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

TURNER  
HARRIS OF TARRANT  
SIMS  
BARRIENTOS  
CARRIKER  
On the part of the Senate

KUBIAK  
YARBROUGH  
RODRIGUEZ  
JOHNSON  
PATTERSON  
On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1479**

Senator Parker submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1479** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PARKER  
MONCRIEF  
ZAFFIRINI

CAIN  
RUDD  
JOHNSON  
DANBURG

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1445**

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1445** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARRIKER  
HARRIS OF DALLAS  
ROSSON  
HENDERSON  
PARKER

WILSON  
CAIN  
YARBROUGH  
CAMPBELL

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1158**

Senator Henderson submitted the following Conference Committee Report:

Austin, Texas  
May 28, 1993

Honorable Bob Bullock  
President of the Senate

Honorable Pete Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1158** have



met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HENDERSON

MONTFORD

ARMBRISTER

HARRIS OF DALLAS

SHELLEY

On the part of the Senate

CRADDICK

HAMRIC

CULBERSON

HEFLIN

A. SMITH

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

### MEMORIAL RESOLUTIONS

**H.C.R. 156** - (Barrientos): In memory of Frank L. Wright.

**S.R. 1123** - By Barrientos: In memory of Martin L. "Red" Gibson.

**S.R. 1124** - By Barrientos: In memory of Chester L. Kooch of Austin.

### CONGRATULATORY RESOLUTIONS

**H.C.R. 153** - (Barrientos): Designating the Grand 1894 Opera House of Galveston as the official opera house of Texas.

**S.R. 1117** - By Haley: Recognizing Judge Dock Watson, who received the President's Award for Outstanding Committee Work from the Deep East Texas Council of Governments.

**S.R. 1118** - By Haley: Recognizing C. L. Simon of Nacogdoches for receiving "East Texan of the Year" Memorial Award by the Deep East Texas Council of Governments.

**S.R. 1120** - By Patterson: Congratulating Jennifer Helen Lotz and Scott Gray Durham on the occasion of their marriage.

**S.R. 1121** - By Lucio: Recognizing Cameron County Clerk Joe G. Rivera, who was selected as honoree of the seventh annual Mary Yturria July 4th celebration.

**S.R. 1122** - By Lucio: Recognizing Anita Correa for her years of service as a schoolteacher and as an adult education teacher.

**S.R. 1127** - By Nelson: Congratulating the Associates Corporation of North America (The Associates) on the occasion of its 75th anniversary.

**S.R. 1128** - By Nelson: Congratulating Mr. and Mrs. W. T. McCorkle on the occasion of their 50th wedding anniversary.

**S.R. 1129** - By Nelson: Congratulating Mr. and Mrs. Clarence D. Cook on the occasion of their 50th wedding anniversary.

**S.R. 1130** - By Nelson: Recognizing Joseph and Mary Kaszynski of Dallas for their contributions to the community and to the youths of Texas.

**S.R. 1131** - By Nelson: Honoring Susie Tonymon for receiving the Belle Chenault Award of the American Medical Association.

**S.R. 1132** - By Nelson: Congratulating Willie Mae Nunn of Cleburne on the occasion of her 100th birthday.

**S.R. 1133** - By Nelson: Congratulating Mr. and Mrs. Asa Cooksey of Granbury on the occasion of their 50th wedding anniversary.

**S.R. 1134** - By Nelson: Congratulating Mr. and Mrs. James Wright of Eastland on the occasion of their 50th wedding anniversary.

**S.R. 1135** - By Nelson: Congratulating Mr. and Mrs. Carl Williams, Sr., on the occasion of their 50th wedding anniversary.

**S.R. 1136** - By Nelson: Congratulating Mr. and Mrs. Charles Harris of Granbury on the occasion of their 50th wedding anniversary.

**S.R. 1137** - By Nelson: Congratulating Mr. and Mrs. William Cook of Azle on the occasion of their 50th wedding anniversary.

**S.R. 1138** - By Moncrief: Recognizing the Movin' Mavs, the wheelchair basketball team from The University of Texas at Arlington, for winning their third consecutive national championship.

**S.R. 1139** - By Wentworth: Congratulating Mr. and Mrs. Joseph Van Bibber of San Antonio on the occasion of their 50th wedding anniversary.

**S.R. 1141** - By Turner: Congratulating Mrs. Marie Wehby of Taylor on the occasion of her 100th birthday.

**S.R. 1142** - By Turner: Congratulating Mr. and Mrs. John C. "Jake" Armstrong of Rockdale on the occasion of their 50th wedding anniversary.

**S.R. 1143** - By Turner: Recognizing the retirement of James Rose of Bryan after 24 years of contributions to the Bryan Independent School District.

**S.R. 1144** - By Turner: Recognizing Ernest Busby of Teague, who was named the winner of the E. E. Wheat Award during the Freestone County National Association for the Advancement of Colored People Freedom Fund Banquet.

#### **ADJOURNMENT**

On motion of Senator Henderson, the Senate at 6:33 p.m. adjourned until 11:00 a.m. tomorrow.

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#### **APPENDIX**

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#### **REPORTS OF STANDING COMMITTEES**

The following committee reports were received by the Secretary of the Senate:

May 28, 1993

**STATE AFFAIRS — H.B. 187, H.B. 751, H.B. 1164, H.B. 1770, H.B. 1862, H.B. 2794**

EDUCATION — H.B. 2118, H.B. 1019, H.B. 1831, H.B. 1651,  
H.B. 1484 (Amended), H.B. 1372, H.B. 1261, H.B. 982, H.B. 326,  
H.B. 227

ADMINISTRATION — S.C.R. 97, H.C.R. 135

**SIGNED BY GOVERNOR**

(May 26, 1993)

H.B. 366 (Effective September 1, 1993)  
H.B. 370 (Effective August 30, 1993)  
H.B. 394 (Effective August 30, 1993)  
H.C.R. 106

(May 27, 1993)

H.B. 476 (Effective August 30, 1993)  
H.B. 690 (Effective August 30, 1993)  
H.B. 2018 (Effective August 30, 1993)  
H.B. 930 (Effective immediately)  
H.B. 1287 (Effective August 30, 1993)  
H.B. 1491 (Effective immediately)  
H.B. 1463 (Effective August 30, 1993)  
H.B. 1503 (Effective August 30, 1993)  
H.B. 1853 (Effective immediately)  
H.B. 1854 (Effective September 1, 1993)  
H.B. 2176 (Effective August 30, 1993)

**SENT TO GOVERNOR**

(May 28, 1993)

S.C.R. 1	S.B. 160
S.C.R. 42	S.B. 183
S.B. 28	S.B. 383
S.B. 55	S.B. 400
S.B. 79	S.B. 427
S.B. 82	S.B. 671
S.B. 95	S.B. 738
S.B. 113	S.B. 952
S.B. 127	S.B. 1015
S.B. 142	S.B. 1201

**SIGNED BY GOVERNOR**

(May 28, 1993)

H.B. 1550 (Effective September 1, 1993)

**FILED WITH SECRETARY OF STATE**

(May 28, 1993)

S.J.R. 18